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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
CELSIUS NETWORK LLC, *et al.*,[1]	)	Case No. 22-10964 (MG)
Debtors.	)	(Jointly Administered)

NOTICE OF FILING OF TRANSCRIPT
FROM OMNIBUS HEARING HELD ON APRIL 18, 2023

PLEASE TAKE NOTICE that an omnibus hearing was held on April 18, 2023 regarding, among other matters, the *Motion of the Official Committee of Unsecured Creditors (I) for Authority to File a Class Claim Asserting Non-Contract Claims on Behalf of Account Holders or (II) to Appoint a Third-Party Fiduciary to Assert a Class Claim on Behalf of Account Holders* [Docket No. 2399] (the "Omnibus Hearing"), as more fully set forth in the amended agenda filed at Docket No. 2492.

PLEASE TAKE FURTHER NOTICE that the Court requested that the Debtors make available for the public the full Omnibus Hearing transcript.

PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit A** is a true and correct copy of the Omnibus Hearing transcript.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Celsius Network LLC (2148); Celsius KeyFi LLC (4414); Celsius Lending LLC (8417); Celsius Mining LLC (1387); Celsius Network Inc. (1219); Celsius Network Limited (8554); Celsius Networks Lending LLC (3390); Celsius US Holding LLC (7956); GK8 Ltd. (1209); GK8 UK Limited (0893); and GK8 USA LLC (9450). The location of Debtor Celsius Network LLC's principal place of business and the Debtors' service address in these chapter 11 cases is 50 Harrison Street, Suite 209F, Hoboken, New Jersey 07030.

New York, New York
Dated: April 26, 2023

/s/ Joshua A. Sussberg

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Exhibit A

In re Celsius Network LLC et. al. **Hearing Transcript - April 18, 2023**

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 22-10964-mg

- x

In the Matter of:

CELSIUS NETWORK LLC,

Debtor.

- x

United States Bankruptcy Court

One Bowling Green

New York, NY 10004

April 18, 2023

10:02 AM

B E F O R E :

HON MARTIN GLENN

U.S. BANKRUPTCY JUDGE

ECRO: KS

HEARING re Hearing Using Zoom for Government RE: Debtors' Application for Entry of an Order (I) Authorizing the Retention and Employment of Stout Risius Ross, LLC as Valuation Advisor, Effective as of February 21, 2023, and (II) Granting Related Relief [Docket No. 2335, 2458, 2460].

HEARING re Hearing Using Zoom for Government RE: Joint Motion for Entry of an Order (I) Approving the Settlement By and Among the Debtors, the Committee, and the Withhold Ad Hoc Group and (II) Granting Related Relief. (Doc# 2334)

HEARING re Hearing Using Zoom for Government RE: Motion for Entry of an Order (I) Approving the Settlement by and Among the Debtors and Odette Wohlman and (II) Granting Related Relief. (Doc# 2331, 2416)

HEARING re Hearing Using Zoom for Government RE: Series B Preferred Holder's Motion for Entry of an Order Establishing Estimation Procedure for The Intercompany Claim Between Celsius Network LLC and Celsius Network Limited in Furtherance of Formulating The Debtors Plan of Reorganization. (Doc# 2367, 2438, 2471, 2472, 2478, 2480)
Hearing Using Zoom for Government RE: Motion of The Official Committee of Unsecured Creditors for Entry of

an Order (I) Establishing Procedures to Estimate the Intercompany Claim that Celsius Network, LLC has against Celsius Network Limited and (II) Granting Related Relief. (Doc## 2369, 2371, 2438, 2439, 2472, 2473, 2477, 2480)

HEARING re Hearing Using Zoom for Government RE: Motion of the Official Committee of Unsecured Creditors (I) for Authority to File a Class Claim Asserting Non-Contract Claims on Behalf of Account Holders or (II) to Appoint a Third-Party Fiduciary to Assert a Class Claim on Behalf of Account Holders. (Doc## 2399, 2396, 2400, 2432, 2439, 2400, 2439, 2467, 2468, 2474 to 2476, 2482, 2484)

HEARING re Hearing Using Zoom for Government RE: First Application for Interim Professional Compensation for Kirkland & Ellis LLP and Kirkland & Ellis International LLP, Debtor's Attorney, period: 7/13/2022 to 10/31/2022. (Doc # 1721, 1071, 1451, 1705, 1736, 1823, 2387, 2483)

HEARING re Hearing Using Zoom for Government RE: First Interim Fee Application of Akin Gump Strauss Hauer & Feld LLP as Special Litigation Counsel to the Debtors and Debtors in Possession for Allowance of Compensation for Services Rendered and Reimbursement of Expenses for the Period July 13, 2022 Through and Including October

31 2022 for Akin Gump Strauss Hauer & Feld LLP, Special Counsel, period: 7/13/2022 to 10/31/2022. (Doc. # 1707, 1072, 1407, 1668, 1736, 1823, 2387, 2483)

HEARING re Hearing Using Zoom for Government RE: First Application for Interim Professional Compensation for Centerview Partners LLC, Other Professional, period: 7/13/2022 to 10/31/2022. (Doc. # 1709, 1736, 1823, 2387, 2483)

HEARING re Hearing Using Zoom for Government RE: First Application for Interim Professional Compensation for Alvarez & Marsal North America, LLC, Other Professional, period: 7/14/2022 to 10/31/2022. (Doc # 1710, 1001, 1419, 1688, 1736, 1823, 2387, 2483)

HEARING re Hearing Using Zoom for Government RE: First Interim Fee Application of White & Case LLP for Compensation for Services Rendered and Reimbursement of Expenses as Counsel to the Official Committee of Unsecured Creditors for the Period of July 29, 2022 Through October 31, 2022. (Doc # 1715, 1224, 1450, 1635, 1736, 1823, 2387, 2483)

HEARING re Hearing Using Zoom for Government RE: First Interim Fee Application of M3 Advisory Partners, LP for Compensation for Services Rendered and Reimbursement of Expenses as Counsel to the Official Committee of Unsecured Creditors for the Period of August 1, 2022 Through October 31, 2022. (Doc # 1716, 1287, 1408, 1606, 1736, 1823, 2387)

HEARING re HEARING re Hearing Using Zoom for Government RE: First Interim Fee Application of Elementus Inc. for Compensation for Services Rendered and Reimbursement of Expenses as Blockchain Forensics Advisor to the Official Committee of Unsecured Creditors for the Period of August 1, 2022 Through October 31, 2022. (Doc # 1718, 1274, 1275, 1374, 1736, 1823, 2387, 2483)

HEARING re Hearing Using Zoom for Government RE: First Interim Fee Application of Perella Weinberg Partners LP for Compensation for Services Rendered and Reimbursement of Expenses as Counsel to the Official Committee of Unsecured Creditors for the Period of August 2, 2022 Through October 31, 2022. (Doc # 1720, 1612, 1736, 1823, 2387, 2483)

HEARING re Hearing Using Zoom for Government RE: First Interim Fee Application of Huron Consulting Services LLC as Financial Advisor to the Examiner for the Period from October 10, 2022, Through and Including October 31, 2022 for Huron Consulting Services LLC, Other Professional, period: 10/10/2022 to 10/31/2022. (Doc # 1719, 1685, 1717, 1740, 1736, 1823, 2387, 2483)

HEARING re Status Conference Using Zoom for Government RE: Debtors' Motion for Entry of an Order (I) Approving the Debtors' Key Employee Incentive Program and (II) Granting Related Relief. (Doc ## 917, 997, 1003, 1114, 1130, 1132, 1133, 1140, 1139 to 1144, 1177, 1182, 1200, 1204, 1283, 1366, 1694, 1841, 1907, 2055, 2181, 2336, 2337, 2339, 2340, 2343, 2395, 2397, 2413, 2401, 2404, 2408 to 2411, 2430, 2481)Status Conference Going Forward on 4/18/2023 at 10 AM. Hearing will be held on 05/17/2023 at 10:00 am

HEARING re Status Conference RE: Application of Connor Nolan Pursuant to 11 U.S.C. §§ 503(b)(3)(D) and 503(b)(4) for Allowance and Payment of Professional Fees and Expenses Incurred in Making a Substantial Contribution (ECF Doc. # 2045, 2434, 2373, 2374, 2382, 2386, 2387, 2441) Hearing RE: Motion Scheduled on 05/17/2023 at 10:00 am

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P R O C E E D I N G S

THE COURT: Thank you very much, and good morning to everybody. I have the amended agenda in front of me. We'll follow that. Mr. Kwasteniet, are you going to begin? I see you standing at a podium.

MR. KWASTENIET: Yes, I will. Good morning, Your Honor. Can you see and hear me okay?

THE COURT: I can. Thank you.

MR. KWASTENIET: Great. Thank you very much, Your Honor. Last night we filed at Docket 2490 a copy of a presentation that Mr. Ferraro our CEO would like to give the Court this morning to open our proceedings. So if it's okay with Your Honor, we request that my colleague Mr. Christopher Koenig be given access rights so he can present the presentation on the screen.

THE COURT: That's fine.

CLERK: Yes, (indiscernible).

THE COURT: Okay. It's on the screen. Thank you very much, Deanna. Okay, Mr. Kwasteniet. Are you going to introduce Mr. Ferraro to do this?

MR. KWASTENIET: Yes, I will, Your Honor. We -- I'm joined on the line today by the Debtor's CEO Mr. Christopher Ferraro. So Chris, if you can identify yourself and then maybe we'll go through this in a series of questions.

MR. FERRARO: Yeah, Chris Ferraro, Interim CEO with the Debtor.

THE COURT: Good morning, Mr. Ferraro.

MR. FERRARO: Good morning, Your Honor.

MR. KWASTENIET: Great. Thank you. Mr. Ferraro, can you please tell the Court about the current status of the custody account withdrawal process?

MR. FERRARO: Yes. Thanks, Ross. Since February 15th when we started the KYC refresh process or custody account withdrawal, 68 percent of the users by count has successfully passed KYC. Measured in value, those users represent almost 90 percent. Beginning March 2nd, eligible users that finished the KYC process were allowed to begin custody withdrawals. As of April 16th, we have completed $32 million of withdrawals or about 65 percent of the distributable value with 17 million remaining to be withdrawn.

As expected, we have seen customers with higher balances withdraw first. Customers who have withdrawn have a balance four times higher than those who have not. We will continue to provide emails and (indiscernible) messaging to remind eligible customers to start the KYC process and withdraw from the platform. We've already sent two reminder emails with another round of notifications going out in the next week.

With respect to the remaining assets in the custody accounts that were not part of the pure custody tranche, on March 21st, the Court approved a settlement among Celsius, the Custody Ad Hoc Group, and the UCC that will return custody assets not currently eligible for withdrawal to users that elect to participate in the settlement. In addition, pursuant to the order approving the settlement, Celsius is now authorized to return the remaining six percent of each eligible user's distributable custody assets that were originally held back in accordance with the Court's previous order.

Celsius filed a revised distribution schedule noting that change yesterday at Docket 2491. Custody account users who opt into the settlement will receive 72.5 percent of their remaining assets in their custody accounts that were not previously authorized for withdrawal less any fees in two different payments. Eligible custody account holders that would like to opt into the settlement are required to submit an election form to (Indiscernible) no later than April 24th at 5 p.m. Thus far, 37 percent of eligible users have opted into the settlement representing 55 percent of the value. Now turning to the next slide.

MR. KWASTENIET: All right. Thanks, Mr. Ferraro. Can you now provide the Court an update on the company's mining operations?

MR. FERRARO: Yes. We ended March with 45,000 rigs deployed. Since my last update in early February, we executed a new hosting agreement for 45 megawatts or over 13,000 machines. The rigs will be hosted in Hardin, Montana, and we expect that all the rigs will be hashing by early May. This is the second hosting deal that we have signed since the Core Scientific rejection in early January, and the two deals are for a total of 30,000 rigs.

For March, we had an adjusted EBITDA of 900,000 down nine percent from February. Quick reminder that the EBITDA for this business is effectively the pre-tax income adjusted down back to appreciation, and there's a good proxy for cash flow from operations. The adjusted gross margin was 16 percent in March down 14 percent from February driven by volatile energy costs at proprietary sites, and the 12 percent higher network cash rate.

The up time, or the percentage of time our machines are (indiscernible) declined to 59 percent due to economic curtailment at our proprietary sites and transformer outages at the Oklahoma City facility. The average value of mined bit coin increased 7 percent from the previous month to approximately 25,000 in March.

Moving to the next slide, which notes a longer trend in the metrics I just discussed, most of the details we just covered, but I did want to point out one item. On

the bottom left graph you see the 45,000 rigs deployed at the end of March, which is a sizable increase to the 28,000 deployed immediately following, excuse me, the Core Scientific rejection in early January. With the new hosting agreements, we expect the rigs deployed to increase to 58,000 in May and expect 58,000 rigs deployed by the end of June when our last proprietary site in Texas comes online. So we're well on our way to mitigating the impact from the 37,000 rigs that were part of the core research.

MR. KWASTENIET: I think we can move onto the next --

MR. FERRARO: Onto the next slide, please.

MR. KWASTENIET: -- to the next slide. Mr. Ferraro, can you please provide the Court an update on the company's current financial situation?

MR. FERRARO: Yeah. As a reminder, we started the case with 138 million of cash, and we now have 166 million on hand as of March month end, an increase of 28 million since the petition date. That's all I have, Your Honor. Sorry I'm losing my voice. I'm getting a little under the weather. Thanks for your time today.

MR. KWASTENIET: Great. So unless (indiscernible) --

THE COURT: Mr. Ferraro, let me ask you a question. So, you know, the value of bitcoin has increased

substantially since the start of the case. I think it was about 22,000 as I recall when the petition was filed. As of today, it's a little over 30,000. How much of the increase of liquidation is attributable to the increase in value of bitcoin?

MR. FERRARO: Your Honor, not very much. You know, we started the case with, you know, margins that were a little bit healthier to where we are right now. We had the EBITDA back then of a couple of million a month, and right now it's at about a million a month. At the very low point of bitcoin prices in December, you know, our EBITDA was effectively zero-ish. So you can think of the rise in bitcoin as having a favorable impact of about $1 million a month on our cashflows.

THE COURT: All right. Mr. Kwasteniet, do you want to move on as -- let's move on with the agenda.

MR. KWASTENIET: That's great, Your Honor, but before I get to the rest of the agenda, I just have one other quick update. It'll just take a minute.

THE COURT: Sure.

MR. KWASTENIET: Your Honor, yesterday was the bid deadline in the Debtor's Stalking Horse sale process, and I wanted to inform Your Honor and the parties listening that the Debtors received bids yesterday from three different parties in addition to the Stalking Horse. So we have a

total of four bids that we are now considering. The Debtors have shared these bids with the Committee, and we will be evaluating the bids and deciding on next steps in the coming days. So the Stalking Horse process is working as we intended and hoped that it would in terms of generating interest and competition.

Your Honor, importantly, these bids are confidential, and it's important that the bids remain confidential at this time while we are going through the negotiation process. The Debtors have already had conversations with the Committee and will continue to do so about the right place and time and manner to disclose the terms and details of the competing bids.

They will not be kept under wraps forever, but for right now while we are negotiating with the parties, it's obviously important that the parties' different bids and positions be known to the Debtors and the Committee, but not known to the other parties. So hence, the layer of confidentiality that applies at this time. That's it in terms of the general update, Your Honor, and we're now ready to move into the agenda.

THE COURT: Let me ask a couple of questions that arose from what you've just talked about. So you had previously filed -- recently filed on the docket a statement explaining the delay in filing a disclosure statement until

this bidding process is done in light of additional interested parties. You've now said there are three additional bids that have been made. What are you -- what is the Debtor and the Committee contemplating? Is there going to be a deadline to the bidders for best and final bids? What's the process going forward?

MR. KWASTENIET: Yes, Your Honor. So with receiving a very significant volume of materials over the weekend and yesterday from the prospective bidders, we've got a lot of work ahead of us over the next few days to process through the bids, compare them, analyze them. There's a bunch of people who are not on this call this morning because they're focused on working through and summarizing and analyzing the bids.

The bids, Your Honor, are not all exactly on fours with each other. Some of the bids propose different structures. So it's not clear yet that it's going to make sense to do a traditional auction because, you know, you have some bids that are one structure and others that are another structure, and they don't really compete directly against each other.

So but I do expect that as part of the process in the coming days and, you know, probably later this week that we'll be going back to all the parties to try to improve their bids again in furtherance of our goal of making a

decision as soon as possible. Your Honor, we've extended the deadline to file the disclosure statement to April the 28th. We're very much hoping to hit that deadline. There is a possibility, of course, if we end up switching to a different bid or materially change the path forward as a result of the bidding process that we may need additional time to finalize that.

But for all the creditors who are listening, shareholders who are listening, all of whom are very interested in as we are in an expeditious resolution of the case, I can assure everybody that the time we're spending right now is very much focused on making sure we have the right -- the best bid to deliver the most value to everybody.

So we've not yet decided, Your Honor, on whether we're going to have an auction or further final -- last and final deadline. If we do, I expect we'll file a subsequent notice on the docket, but we're just -- we're working through and still analyzing how best to proceed in light of the different, you know, style of bids that we've received.

THE COURT: So let me raise another issue, and that is certainly when you got my approval for the breakup and expense reimbursement as revised, before I ruled on that, I gave a deadline to the regulators, state and federal, to advise what their views were. They all

obviously reserved all their rights, and I certainly fully understand that. But regulatory compliance is really very important. And to the extent that either the successful bidder is different than the current one or the structure changes, that could -- conceivably could have an impact on the regulatory issues as well.

I do think it's important. I'm not ordering you do at this point. I don't know what the structures are, who the bidders are, etcetera, but I really do urge that Debtors' counsel and Committee counsel, before you go live with a selection of a successful bidder that you have further discussions with the Office of the United States Trustee and the federal and state securities regulators. It would be unfortunate if we wind up with a surprise that you select someone and then there's a whole new round of objections because of the change in structure.

You know, I don't -- let me make clear. I'm not expecting, if there is that discussion with the regulators, that they're going to be bound by what their discussions with you are, but I do think it's important. I just -- as this goes forward, I want whatever the successful bid is, structure and bidder, actually can move forward to hopefully, you know, voting -- a disclosure statement, voting, and a plan. So let me leave it at that. I just -- you know, the structure was known. The Stalking Horse was

known, and that may change for a very good reason. But let me leave it at that.

MR. KWASTENIET: Thank you, Your Honor. We very much agree with and appreciate your comments, and we've spent a lot of time. These bids didn't just come in out of the blue. We've had many diligence calls with the three parties who submitted bids. Some more than others. Some have been involved for longer than others, but certainly regulatory compliance has been something we've spent a lot of time on, and we --

THE COURT: You've cut out, Mr. Kwasteniet. I can't hear you.

MR. KWASTENIET: Your Honor, can you hear me again?

THE COURT: I can, yes. Go ahead.

MR. KWASTENIET: Okay. We got an alert that the system had been muted, so I had to figure out how to unmute.

CLERK: I was trying to mute another party that was speaking and Zoom jumped on me. My apologies.

MR. KWASTENIET: No problem. I'll take that as a signal to wrap up my opening remarks.

THE COURT: Go ahead.

MR. KWASTENIET: Your Honor, we have been meeting regularly, almost weekly, with the state and federal regulators. I believe we have another update call later

today, so I can assure you and everybody listening that we're going to be very mindful of any go-forward bid and how it will work from a regulatory standpoint. That is first and foremost in our minds and is one of the primary criteria that we're using to evaluate.

I mean, certainly the value of a bid is important, but the ability to get a bid executed is equally important. And you know, that's something that we're very, very focused on, Your Honor.

THE COURT: All right. Thank you very much. All right. So let's move onto the agenda. First is the --

MR. KWASTENIET: Your Honor --

THE COURT: Go ahead.

MR. KWASTENIET: Yes. And I'm going to be yielding the podium to my colleague Ms. Jones for the second item on the agenda, which is the Stout retention. Your Honor, after the Stout retention, I think it makes sense with Your Honor's permission to maybe handle the fee matters. It occurs to us that there's a great many professionals on the line, virtually all of whom are billing the estate who are on for the fee matters and who, if we handle the fee -- took the fee issues out of order perhaps after the Stout retention because Stout is also on the line for their retention, and that's uncontested, maybe we pull up the fee matters to then be able to free up and release

all the many advisors who are on for their fee hearings.

THE COURT: I'm in agreement. Go ahead. Let's deal with Stout first. Go ahead, Ms. Jones.

MS. JONES: Good morning, Your Honor. Elizabeth Jones with Kirkland and Ellis on behalf of the Debtors. Your Honor, the next item on the agenda is the Debtor's retention application seeking to employ Stout as the valuation advisor, which was filed at Docket Number 2335. In addition, Your Honor, Mr. Joel Cohen, the managing director of Stout, is on the line. He provided a declaration both in support of the original application and a supplemental declaration filed at Docket Number 2460.

Your Honor, as explained both in the original application and supplemental declaration, the Debtors are seeking to retain Stout to provide specific valuation work related to the Debtors' illiquid crypto and specifically in connection with the valuation that will be provided in the Debtors' disclosure statement. Given the unique nature of the Debtors' assets, it was necessary to retain a specialist that could handle that type of valuation work.

Your Honor, since we filed the application, we had constructive conversations with both the Committee and the U.S. Trustee, and we were able to respond to their questions and resolve any of the concerns both by filing a revised proposed order at Docket Number 2458, and as we further

explained in the supplemental declaration filed at Docket Number 2460. Other than that, Your Honor, we received no objections or other questions or informal comments. So unless Your Honor has any questions, we respectfully request entry of the revised proposed order filed at Docket Number 2458.

THE COURT: Thank you, Ms. Jones. Ms. Schwartz, do you want to say anything on behalf of the U.S. Trustee?

MS. SCHWARTZ: Thank you, Your Honor. Andrea Schwartz on behalf of the U.S. Trustee. Good morning, Judge. I just want to say, Judge, that I'm pinch-hitting today. Although Ms. Cornell my colleague, and I believe now Mr. Masumoto are on the line, but Ms. Cornell has lost her voice. So I'm coming in today, so I'm sure you'll give me your indulgences.

But with respect to this retention application, we don't have any objection. As counsel stated, they filed a supplemental declaration. They took our comments to the proposed form of order. My only regret is that I don't have a podium and background like that because I feel somewhat casual compared to my counsel. But we'll have to roll with that for today. So we have no objection.

THE COURT: Okay. Thanks very much, Ms. Schwartz. Anybody from the Committee want to speak?

MR. PESCE: No, Your Honor. Our -- this is

Gregory Pesce on behalf of the Committee. We've reviewed the application and we don't have an objection either today.

THE COURT: Okay. All right. There are no objections that have been filed, and I -- we've reviewed the retention application. It's appropriate and it's approved, okay? Thank you very much.

MS. SCHWARTZ: Thank you, Your Honor. With that, I will cede the lectern over to Ms. Katherine Stadler as counselor to the Fee Examiner.

MS. STADLER: Thank you. Good morning --

THE COURT: Ms. Stadler, good morning.

MS. STADLER: Good morning, Your Honor.

THE COURT: Go ahead.

MS. STADLER: Okay. We are happy to report that the Fee Examiner has reached consensual resolution with 9 of the 11 interim fee applicants. With the Court's permission, the other three will be adjourned to allow us to continue our discussions with those professionals and hopefully reach consensual resolutions with them as well.

I want to note that the applications that are on for hearing today are for the first interim fee period, which ran from the petition date through the end of October 2022. The second interim fee period, November 2022 through February of 2023, is not on the agenda for today. Those applications were filed last week, and the fee examiner will

review and report on those consistent with the procedure outlined in the interim compensation order and the fee examiner order.

I have reviewed -- we have reviewed the Debtor's UCC responses to the fee objections that are on the record. I just wanted to note that for purposes of the Fee Examiner's reporting, we will be addressing objections as we report and recommend the application. In other words, the Fee Examiner's recommendation with respect to objections currently on file only relate to the nine applications that are currently recommended for court approval. They do not relate to any monthly fee application objections that may be out there, or do they relate to any second interim fee applications that may be out there.

We also note that the Fee Examiner did not receive service of Mr. Hirschberg's most recent statement on fees. I was able to get that after seeing it on the agenda from Debtors' counsel. But I would simply ask that anyone filing objections or comments related to fees please copy the Fee Examiner counsel using the contact information in the interim compensation order.

We do have one issue that Ms. Schwartz advised us of just a little before the hearing. She reported that the standard in New York is to continue withholding the 20 percent holdback of fees even after entry of an interim

compensation order. Ms. Schwartz, as she's pinch-hitting, didn't have a chance to review the full record in the Interim Compensation Order. So rather than have a discussion about that on the record, we're going to wait, submit, and upload the proposed order arising from today's hearing until the U.S. Trustee is comfortable with the way the Interim Compensation Order is worded. So her rights with respect to that are reserved.

THE COURT: Let me just say that what Ms. Schwartz advised you is correct. It is our practice in New York, unless there's a specific order releasing part of a holdback, is that the -- you know, the 20 percent holdback continues on during the case. It's certainly in those instances where I've either reduced it or eliminated it. It's usually where a case is, for all practical purposes, done, you know, where there are no objections, there is a confirmed plan or something.

But it wouldn't in my view -- I'll certainly hear argument about it if it comes to that, but it certainly wouldn't be in a case of the stage where this case is. But again, I'm -- I'll reserve ruling until actually hearing it, but certainly that does remain an issue, and you can continue your discussions with the U.S. Trustee, and we can -- we don't need to have another -- if your position is that you agree with what has been our practice here and are not

seeking to deviate from it, we don't have to have another hearing to do that if, in fact, the issue is whether it'll be reduced or waived as to what's approved. We'll have to have another hearing, but --

MS. SCHWARTZ: Judge?

THE COURT: Yeah, go ahead, Ms. Schwartz.

MS. SCHWARTZ: Thank you, Your Honor. Andrea Schwartz for the U.S. Trustee. I don't think you're going to need another hearing. I'm fairly confident speaking with Ms. Stadler and Judge Sontchi that we'll get it resolved.

THE COURT: Okay.

MS. SCHWARTZ: I believe that that standard practice was in the first fee order, but there was a revised fee order and somehow somebody missed it --

THE COURT: Okay.

MS. SCHWARTZ: -- you know, going forward. So I don't think it's a problem then.

THE COURT: Okay.

MS. SCHWARTZ: Each of Ms. Stadler and Judge Sontchi have been very gracious when I called them this morning to advise them. So -- and the only other thing that I'd say, Your Honor, with respect to all of the fee applications is that the U.S. Trustee is just going to reserve its rights until the finals to the extent we want to file anything.

THE COURT: Sure. All right. Mr. Sontchi, do you want to be heard? First let me say I appreciate -- I have in front of me the Examiner's Summary Report, which is ECF Docket 2387, and I appreciate all the work that's gone into this in reviewing the fee applications. And I appreciate the cooperation of all of the counsel who've submitted fee applications in working out with the Examiner and his counsel, you know, the issues that have come up.

You know, I said before the Fee Examiner was appointed when the issue was presented and it was consensually agreed by the parties, I made the comment that I've never been a giant fan of fee examiners. In this case, I am. The volume of fee applications which the Court has reviewed but takes great comfort from the fact that there's a fee examiner who was truly expert in all of this and is able counsel in doing this. So I'm very appreciative. Mr. Sontchi, do you want to be heard?

MR. SONTCHI: Well, Your Honor, I was taught very early in my career that when things are going well, shut up. And things couldn't be going better based on your comments. No, I want to just thank Ms. Stadler's team and the incredible amount of work they've done, very sophisticated analysis. And all the lawyers, even the ones we haven't agreed to go forward with today that we're still in discussions with, they've been extremely cooperative.

The information flow has been excellent. We're just still trying to work through some issues with two of them, and then one of them came in so late we didn't have an opportunity to actually get it done in time. But for the second and the third, maybe who knows how many more, we will be -- and we've told the parties this, we will be a little tougher, well, maybe quite a bit tougher, on issues about staffing now that the case has settled into more of a normal rhythm.

We all know what it's like to file a case. We all know how chaotic they are at the beginning. This one was a particularly chaotic case. We've also asked them to track on a fee basis interactions with pro se participants so we can get a better idea of how much time is being spent dealing with pro ses, who, as you know, are very active in this case, which is perfectly fine, to make sure that the resources that are being put to that are appropriate given what's going on in the case.

But things have been going well. I've got a lot of cooperation from the professionals, and I very much appreciate it, and hopefully it'll be smooth going forward. Thank you, Your Honor.

THE COURT: Thank you very much. Let me -- I just want to make a couple of other comments, and really apropos of what Mr. Sontchi just said. So this case is certainly

unusual from my experience by the number of pro ses who've been actively involved in this case from the start. It -- you know, it's in part reflected by the fact that I'm looking at the bottom of my Zoom screen and I see there are 261 participants who've logged onto Zoom today. Of course, many of them may be counsel, but more are pro ses. And we've had throughout this case, and I think it's extremely important, that there be complete transparency about how this case is progressing.

And so I assume that many of the 262 who are on are, in fact, pro se litigants not only from the United States, but from outside the United States as well. And so this case, perhaps more than most others, there has been -- and I encouraged right at the outset that Debtors' counsel and Committee's counsel be accessible to the pro ses. I think many of the objections or filings of the pro ses made have raised important issues. I've said that from time to time.

And even when the result has been have an objection overruled, I think that points that have been raised have been very important and have been taken into account by the Debtor and the Committee in some of the relief they've sought or the form of the orders that have been filed. So I would reiterate that. So yes, there has been a lot of time of professionals taken up with

communicating with pro ses, but I do think that that is important here.

Let me make one other comment about pro ses. So I received this morning Mr. Frishberg's most recent objection with respect to the Kirkland fees. The objection is untimely, but the issues that it raise certainly have been something that have been on my mind for some time, although not articulated or raised. This is really the issue about any fees incurred in connection with an effort to file a late claim in the Voyager case.

As I think people are aware, Kirkland is counsel for the Debtor in Voyager and is counsel for the Debtor in Celsius. I won't explore -- I'm not sufficiently versed in it to be able to address the issue concretely at this stage, but it certainly raises issues about if a claim was not timely filed on behalf of Celsius in the Voyager case, why was that? And is it appropriate in those circumstances for fees to be awarded in this case?

What I would say is, you know, Ms. Stadler and Mr. Sontchi, it may be something that can't be fully resolved at this time with respect to these fee applications for which approval is sought. And I don't want to unnecessarily hold up approval of Kirkland's fees or other's fees if the conclusion -- if there's a recommendation that there be an adjustment to Kirkland's fees. That adjustment, as far as

I'm concerned, can be reserved and made in the next application that is reviewed.

So again, it's -- I will wait. I think, Ms. Stadler, you and Mr. Sontchi should review the issue, if not necessarily the late-filed objection because I think it is a serious issue. And again, it doesn't -- in my view, does not need to hold up the approval of the Kirkland fees. To the extent there's an adjustment, it can be made when the next fee applications are up for consideration. I don't know, Ms. Stadler or Mr. Sontchi, is that satisfactory to the two of you?

MR. SONTCHI: It is, Your Honor. And we will definitely look at that in the context of the next round of interim fee applications. And I think since I'm 99 percent sure based on your comments and Ms. Schwartz's comments that we're going to allow -- or not allow, but that the 20 percent holdback is going to remain in place, that we don't need to worry about reducing the fee application allowed about under this interim order for Kirkland at this point.

That I think can be dealt with the next time. Because if money is going to be withheld because of this issue in Voyager, I cannot imagine it would rise above the level of 20 percent --

THE COURT: Right.

MR. SONTCHI: -- of the approximately $18 million

in allowed fees from the (indiscernible).

THE COURT: I'm fine with it. Look, there's a lot of work that's being done. The work has been, in my view, well done in everything I've seen. This is a separate issue really, and I'll await any recommendation from you as the Fee Examiner and your counsel. And obviously, I'm sure you'll have discussions with Kirkland as necessary in dealing with it, okay?

MR. SONTCHI: We will, Your Honor.

MS. SCHWARTZ: Judge, Andrea Schwartz. Just --

THE COURT: Go ahead.

MS. SCHWARTZ: -- one thing I just want to mention that we're aware of that issue as well. And similarly, with respect to all fees, we'll reserve until all of the interim fees are up for final.

THE COURT: That's fine. Let me be clear. While -- you know, in my time on the bench, there have only been a handful of instances where, yeah, all issues are reserved for the final. So the fact that interim fees are approved does not mean issues can't be raised in the final. There've only been a handful of times when the Court has concluded that further adjustments are required at the time of the final fee hearing. So that's not now, okay? But the point is well-taken, Ms. Schwartz. All right. Let me see. Is there anybody else? Mr. Pesce, you want to be heard?

MR. PESCE: Yes, Your Honor. On behalf of the Committee, just two quick points. We wanted to thank the Fee Examiner for working with us on our application, and you know, the consensual reduction we negotiated. We're going to reserve on the characterization that the U.S. Trustee made regarding the two fee orders. We disagree with that, and we can follow up with the U.S. Trustee and the Fee Examiner regarding the alleged change that she referenced. And we can come back to the Court if need be after that.

But I did want to thank Mr. Sontchi for his efforts to work with us over the last few months and his counsel's efforts over the last few months to work on this issue.

THE COURT: You know, it doesn't look like you're in Singapore at the moment, Mr. Sontchi.

MR. SONTCHI: I'm not. For once. My trip was canceled at the last minute. I just -- I will say, and I didn't -- I don't want to get into it, Ms. Schwartz, at all because this happened last minute --

THE COURT: Let's -- Mr. Sontchi, let's leave this --

MR. SONTCHI: Okay.

THE COURT: -- let's leave this issue. I'm satisfied with where the record is at this point. Let me see whether anybody else wants to be heard. I'm -- again, I

expressed my reservations about fee examiners. I may change my view about it, but --

MR. SONTCHI: Okay. Like I said, time to shut up.

THE COURT: Okay. Mr. Frishberg, very briefly, but your -- the most recent objection is untimely. Go ahead, Mr. Frishberg.

MR. FRISHBERG: I'm sorry about it being untimely. I have no issue with it being reviewed in the final interim fee applications, and I also reserve on the rights. Thank you very much.

THE COURT: Okay. Thank you. Anybody else wish to be heard? All right. There were some other objections, and I would give anybody else who filed an objection -- Mr. Ubierna De Las Heras filed an objection, but I'm prepared to rule now. I think it's -- and I think -- Ms. Stadler, I think because I think you said that there was an agreement with counsel as to which fee applications are being -- are not going to be approved at this point, are being held back, could you just indicate specifically so our record's clear as to which ones those are, so I don't have to go through each individual one?

MS. STADLER: Yes, Your Honor. They are listed on Exhibit B to our report. It's the Ernst and Young first interim fee application Docket Number 2170. That was filed very late, so that's the one Mr. Sontchi referred to as we

haven't had time to finish our analysis yet. The other two are Latham and Watkins, Special Counsel to the Debtor, Docket Number 1712, and Jenner and Block and Shoba Pillay, the examiner and her counsel, Docket Number 1717. Discussions with those two latter parties are continuing.

THE COURT: All right. And I guess what I would say on that score, if you finished your discussions with them and there's a proposed resolution, don't wait for the next (b) hearing --

MS. STADLER: Yes.

THE COURT: -- to bring that on. You can -- I would permit you to do it on presentment. If there are objections, obviously we'll have to have a hearing, but I'll review carefully what it is that you report with respect to those. But you can -- I'll permit you to notice it on presentment. And you know, if there are objections, we'll set a quick hearing on it and deal with that, okay? I don't want to unnecessarily hold up their professionals and their fees, okay?

MS. STADLER: Yes. Thank you for that instruction. We will do so.

THE COURT: All right. So if there anybody else who wishes to be heard with respect to the fees that are on for approval today, interim approval today? All right. I must say I think it -- it's been rare over the years when I

haven't had issues that I've raised. One of the points that I've always made is when -- for example, when the U.S. Trustee has negotiated adjustments in an application, I never want to be in the position of sort of DD'ing an applicant because there may be issues that I had and where I view the adjustments that have been made based on either the U.S. Trustee's work or, here, the work of the Fee Examiner and his counsel.

I will report myself as satisfied. So each of the applications that are on for interim approval is approved. Submit -- work out the exact terms of the order, submit the order, and it will be entered. I'm sure all the counsel will be happy about that. Okay? Thank you very much. And certainly, any of the counsel who are here running their clock because they're here for the -- their fee applications, you're excused unless you want to stay on your own nickel.

MR. SONTCHI: Thank you, Your Honor. Good-bye.

MS. SCHWARTZ: Thank you.

THE COURT: Thanks very much. All right, Mr. Kwasteniet. I don't know where -- who's going to pick up? Ms. Jones, are you picking up again, or --

MS. JONES: Yes.

THE COURT: Okay.

MS. JONES: Good morning again, Your Honor.

Elizabeth Jones of Kirkland and Ellis on behalf of the Debtors. We will go ahead and back into order on the agenda and move forward with Agenda Item Number 3, the motion to approve the withhold settlement, which was filed at Docket Number 2334.

Your Honor, as we've noted on our March 8 omnibus hearing, we had reached an agreement in principle with the withhold Ad Hoc Group and the Committee, and we're very pleased to be here today in front of you with a full and consensual motion and no objections filed on the docket. Since March 8, Your Honor, we have worked hard in documenting that settlement agreement, and signing and executing, which is also attached to the motion at Docket 2334.

Your Honor, as further explained in the motion and the papers, the settlement agreement resolves the current pending litigation between these three parties, both with respect to the Ad Hoc Group's list day motion that was filed back in September at I believe Docket Number 737. I may have may have misstated that, but also the pending litigation with respect to Phase 1 and 2 that was previously settled with the Custody Ad Hoc Group.

Your Honor, pursuant to the settlement, we are settling claims and causes of action related to withhold assets held by the members of the Withhold Ad Hoc Group. In

exchange for those settling of claims, we have agreed that the Debtors will pay those members after entry of the settlement order 15 percent of the value of their claim as of the petition date, and the remaining 85 percent will be recharacterized as an earned claim. So going forward and in connection with the plan, they'll be voting an earn claim, not a withhold claim.

Your Honor, after seven months of pending litigation with the parties, we believe that this settlement meets the requirements of Bankruptcy Rule 9019 that it is reasonable and in the Debtor's best interest and business judgment to enter into that, and that it provides a consensual good resolution for all parties involved. So Your Honor, unless you have any questions, we respectfully request entry of that. And I'm also happy to explain some of the other differences and similarities with respect to the custody settlement if that's also helpful.

THE COURT: Let me ask a couple of questions, and other counsel may want to address them. There were no objections filed to the approval of the settlement, but I have a couple of questions. So if I'm correct, there was no true withhold wallets, and the coins for the settlement will be coming out of the general aggregate wallets, which is potentially to the detriment of earn Creditors. Why do you -- is that correct? And do you believe the settlement is

fair and reasonable given that it averts coins from the general earn Creditors to a smaller group of Creditors?

MS. JONES: Yes, Your Honor. First, with respect to your first question, that's correct. It's coming from the aggregator wallets. And with respect to your second question, we do believe that it is fair and equitable given that the Court has found that the assets tell that, on behalf of earned customers, are property of the estate, which means the costs and expenses to continue litigating these issues with the withhold Claimants would also come out of that amount.

Here we believe, given the size of the Withhold Ad Hoc Group, which is about 1.3 million in withhold assets, that paying the 15 percent of that value is significantly less than the cost that would be associated with litigation. So it is going to benefit all parties.

THE COURT: Okay. The other question I have is what's the total estimated recovery for withhold Creditors and how that compares to the recovery for the settling custody holders and the general earn Creditors. For custody holders, I think they were getting 72.5 or they were potentially getting 72.5 percent recovery, which made it easier for me to compare numbers. Let me stop there.

MS. JONES: Yes. That's correct. And I will note, Your Honor, that the earn recovery is still -- given

our valuation work and disclosure statement still subject to change. But I will say when we were negotiating the settlement, the -- this 15 percent and 85 percent breakdown puts the withholder recovery right in the middle of earn Creditors and custody. So I would say if earn is projecting around a 50 percent recovery or so, and custody is at 72 and a half, this puts the withhold group around the 60 percent mark.

And again, given where we stand in litigation and that there was still no decision yet as to whether withhold is or is not property of the estate, we thought that appropriate and reasonable settlement would be in between those two amounts.

THE COURT: All right. Thank you. Ms. Kovsky, do you want to be heard on this?

MS. KOVSKY: Thank you, Your Honor. Deb Kovsky for the Ad Hoc Group of Withhold Account Holders. First I wanted to thank the Debtors and the Committee for working with us to get to a consensual resolution. As Ms. Jones said, we believe that this is a reasonable sort of split-the-baby resolution for our claims in addition to stopping the bleeding of the litigation costs.

I also wanted to point out, and I know that Your Honor and I had had words about this at our last hearing on this matter back in December, but the withhold account

holders do believe that they had a constructive trust claim with respect to a general earn asset or the general property of the estate that we certainly would have pursued. So in light of our claims, the cost of litigation, and the small size of the Creditor group, we do believe that this is an appropriate outcome and is fully consensual.

THE COURT: I didn't ask Ms. Jones as I'll ask you, either one of you can answer it. So how does the election process work with respect to this proposed settlement?

MS. JONES: The --

MS. KOVSKY: I'm sorry, Ms. Jones. Go ahead.

MS. JONES: Thank you, Your Honor. Again, Elizabeth Jones of Kirkland and Ellis on behalf of the Debtors. So Your Honor, the election process is something that we thought very long and hard here, and considered a lot of different factors to determine what we thought would be the most fair and equitable result for all holders of withhold claims or all holders of withhold assets.

And in this scenario, we are offering the settlement only to members of the Withhold Ad Hoc group. They have already signed the agreement. Unlike custody, there won't be a proposed settlement election process, but there will be the opportunity for all the full payments to have the same settlement in connection with the plan if the

class carries the plan. The reason again for that is at the time we entered into the settlement, the period that we were thinking of for solicitation and in connection with the plan disclosure statement, the 30-day election period likely would have overlapped, which would have created very confusing and potentially harmful results for those trying to vote and understand what classes of plans they were going to be classified.

We also wanted to make sure that everybody had the opportunity to receive this settlement, but without it creating a number of other problems, which is why we ultimately thought this would be the best resolution. And again, given that the only parties right now that have an open claim dispute the Debtors is the Withhold Ad Hoc Group because there has not yet been a determination as to whose property withhold assets belong to.

THE COURT: How many are in the Ad Hoc Group Withhold --

MS. JONES: Thirteen.

THE COURT: I'm sorry? Say it again.

MS. JONES: Thirteen.

THE COURT: Thank you very much. Okay. All right. Mr. Hermann, you want to be heard?

MR. HERMANN: Sure, Your Honor. Immanuel Herrmann, pro se Creditor. I think the settlement's fair

and reasonable. I support it. You know, there's a lot of ambiguous situations and contractual ambiguity in this case. I think the settlement's needed. I think, you know, other similar settlements may be needed down the road to deal with some of the complexity of this case. And I think it would cost Creditors a lot more to actually -- you know, we have 13 people here. I think it would cost Creditors a lot more to actually -- and even if it goes to all the withhold people, I just think that it's -- we should end the bleeding, and I support it.

THE COURT: Thank you, Mr. Hermann. Does anybody else wish to be heard? All right.

MS. AMULIC: Yes, Your Honor.

THE COURT: Oh, I'm sorry.

MS. AMULIC: Sorry.

THE COURT: Go ahead.

MS. AMULIC: Andrea Amulic from White and Case for the Committee. Just really briefly --

THE COURT: Yeah, please.

MS. AMULIC: -- wanted to express our support for the settlement, and we agree with Ms. Jones and Ms. Kovsky's statements as to the cost savings and the benefits of the settlement relative to what would ultimately be a really time consuming and resource heavy process in terms of proceeding with phase two. So we are vigorously in support.

THE COURT: Thank you very much. So I'm ready rule, and yes, I'm approving the settlement. So but just briefly to give the reasons, so this is a 9019 motion. You know, settlements are favored in bankruptcy, in fact encouraged. The Court has to determine whether the settlement is fair and equitable and in the best interest of the estate. As is typical, I apply the seven non-exclusive factors set forth by the Second Circuit in its decision in In re Iridium Operating, LLC, 478 F.3d 452. It's a 2007 decision.

Since there are no objections filed, I will not go through each of those seven factors. They're not all applicable in the circumstances, but I've considered the factors to the extent that they're applicable. And I have concluded that this settlement is fair, reasonable, and appropriate. It forgoes what would be complicated and expensive litigation, both for the Ad Hoc Committee members and for the Debtor. And so I think that this is a -- you know, is a perfectly appropriate and reasonable settlement, and I'm pleased to approve it.

So provide me the order in Word format, and it will be entered. Thank you very much. And I really do appreciate the efforts of the Debtor, the Committee, Ms. Kovsky on behalf of the Ad Hoc Committee. And you know, I'm glad you were able to read a consensual result. You know, I

think, as usual, the best settlements don't make anyone entirely happy, but that's the nature of the process. So all right. Thank you. Let's move on, on the agenda then.

MS. AMULIC: Thank you very much, Your Honor. With that I --

MS. KOVSKY: Thank you, Your Honor.

MS. AMULIC: Oh, apologies. I will cede the podium to my colleague Ms. Patricia Loureiro.

THE COURT: Okay.

MS. LOUREIRO: Good morning, Your Honor. For the record, Patricia Loureiro from Kirkland and Ellis on behalf of the Debtors. Up next on the agenda is another settlement motion. This approving a settlement we reached with a former employee of the Debtors. Before we get into the substance, I'd like to introduce into evidence the declaration of Mr. Christopher Ferraro, the interim (indiscernible) --

THE COURT: May I ask are you -- you don't have a camera? You're just on the phone?

MS. LOUREIRO: I'm on a camera with the video.

THE COURT: Oh, okay. I'm seeing a box around a different one. Now I can see you. Go ahead. Please go ahead. I'm sorry. You want to introduce the declaration of Mr. Ferraro, which is what ECF 2416?

MS. LOUREIRO: That's correct, Your Honor. And

Mr. Ferraro is here on Zoom and available to testify to the extent any party wishes to cross-examine him.

THE COURT: Are there any objections to the Court admitting in evidence the Ferraro declaration, which is ECF Docket Number 2416? Hearing no objection, it's admitted into evidence. Go ahead.

MS. LOUREIRO: Thank you, Your Honor. As a bit of background, on June 1, 2022, six weeks ahead of the petition date, Ms. Wohlman was separated from her employer Debtor Celsius Network Limited, which was formed under the laws of England and Wales. Historically, the Debtors provided severance benefits to employees in the event of a termination that is not for cause.

As a condition to receiving severance benefits, the Debtors required that employees execute a separation agreement releasing any claims held against the company. Ms. Wohlman was offered a separation agreement, but did not sign the agreement. As a result, the Debtors did not seek authority to pay Ms. Wohlman any severance benefits in the wages motion filed on the petition date. Ms. Wohlman filed a limited objection to the wages motion seeking payment of severance she believed she was entitled to, and the Court overruled this objection.

Ms. Wohlman then filed a claim in the U.K. Employment Tribunal alleging claims including that Celsius

discriminated against her because of her alleged disability. The Debtors asked that the tribunal recognize the authority of this court and the global nature of the automatic stay. The tribunal indicated that additional briefing was required to understand whether it was appropriate to apply the automatic stay absent a formal recognition proceeding in the U.K. The tribunal then proceeded to schedule further hearing dates, including evidentiary hearing set for this July.

In light of this, the Debtors sought to settle with Ms. Wohlman, and the results of these negotiations are embodied in the settlement agreement attached as Exhibit 1 to the proposed order. The settlement agreement contemplates an 85,000 pound payment to be paid to Ms. Wohlman in exchange for the withdrawal and release of her claim. The settlement agreement was presented to and approved by a conciliator appointed by the U.K. Employment Tribunal, and also reflects comments from counsel to the Committee who support entry into the settlement agreement.

The Debtors believe the settlement is the most cost-effective path forward that also happens to provide the greatest amount of certainties. Given the expected cost of defending against these claims range from 100,000 pounds to 350,000 pounds, as well as the risk and uncertainty associated with fully litigating this claim, the Debtors, in

an exercise of their business judgment, believe that the settlement is fair and equitable and in the best interest of the estate. Your Honor, with that background, I'm happy to answer any questions you may have.

THE COURT: I don't have any questions. Does anybody else want to be heard? Okay. As I say, there were no objections that were filed. So the Motion to Approve the Wohlman Settlement is ECF Docket Number 2331. Attached to the motion as Exhibit A is a proposed order. And the deadline for objections was April 11th. As I say, no objections were filed. Mr. Ferraro's declaration, ECF 2416, addresses this as well. The Court is approving the settlement.

I've considered the usual factors. You know, I've described the In re Iridium Operating seven non-specific factors. There's a long line of cases in this district and in this circuit with regard to the standards for approving settlements. What's clear to me is if this actually had to be litigated, it would be very expensive to the estate to do that. I think that the proposed settlement amount is fair and reasonable in the best interest of the Debtor's estate.

Consequently, the Court will enter an order -- enter the order approving the settlement. Thank you very much.

MS. LOUREIRO: Thank you, Your Honor. At this

time we'll cede the podium. I think that the Committee is next on the agenda.

THE COURT: Yep.

MR. COLODNY: Good afternoon, Your Honor. Aaron Colodny from White and Case on behalf of the Official Committee of Unsecured Creditors. Can you hear me okay?

THE COURT: I can. Go ahead, Mr. Colodny.

MR. COLODNY: Thank you, Your Honor. We are here to present our motion to file a class claim on behalf of account holders. Or alternatively, to have an independent fiduciary bring a class claim on behalf of account holders.

I think I'll begin by saying there's no question here that there is serious claims by account holders for pervasive fraud, misrepresentation, deceptive practices, and material omissions by the Debtors. That was acknowledged by the Court in its ruling on the claim objections. It's in the examiner's report, and I don't believe any party, including the Debtors or the preferred equity holders, contest those allegations exist.

The issue brought by our motion is how those claims should be pursued. Should they be pursued in an ad hoc fashion by pro se creditors without the resources to properly bring those actions, that's what the preferred equity holders would advocate. Or should they be pursued in an organized collective approach that gives account holders

a fair fight and allow these cases to proceed in an efficient manner? That's the approach the Committee's advocating.

Our approach is informed by Your Honor's comments at the last hearing that the claims process needs to be a fair fight. It's also informed by a personal experience pursuing the Debtor's initial path, which was the Bellwether claims objection process, and the difficulty of wading through the various issues, even to get close to a litigation scheduling order in those matters. In light of those facts, we sought your authority to file a class claim on behalf of all account holders.

At the top, I want to address a comment made in Ms. Cornell's statement filed yesterday that we brought this in haste. That's absolutely not true. We carefully considered the facts, the circumstances, and the options. We requested that the Debtors schedule non-contract claims and mark them as disputed so that we could then seek an estimation for purposes of confirmation.

When that was denied, we sought to inform our constituents of your ruling and the amended bar date through both posting on our website and Twitter town halls to make sure everyone knew about the amended bar date deadline and what was coming. And at the end of the day after careful consideration, we determined to request your permission to

bring the class claim.

That decision is supported by the facts uncovered in the examiner's report in our own investigation. Those facts demonstrate that Celsius fundamentally misrepresented its business to account holders and failed to inform its account holders of significant risk that the company took and suffered. Those misrepresentations and omissions pervaded CNL's entire advertising and messaging strategy. They were part of its sales pitch to account holders to convince them to transfer their savings to Celsius, and they went to the heart of their business.

Now, those claims aren't before Your Honor today. The claim is not on file. Rather, we're requesting permission to file that claim as is required by the bankruptcy code. And I understand that the examiner's report is not admissible evidence, but what it is, is a 476-page report that was provided by -- that was prepared by an experienced and independent investigator, which demonstrates the basis and the factual underpinnings of our claim.

A claim is like a complaint, and if permitted by this court, we will establish through admissible evidence that that claim is true. But in light of the Series B in Ms. Cornell's comments that we proceeded in haste and did not specify our claims, I want to spend a bit of time to go a bit backwards and highlight some of the key themes that

pervaded CNL in Mr. Mashinsky's marketing. Mr. Mashinsky --

MS. SCHWARTZ: Your Honor? Excuse me, counsel. Your Honor?

THE COURT: I'm sorry, Ms. Schwartz. He's -- yes?

MS. SCHWARTZ: No, I was just going to say it might be helpful -- just suggesting it might be helpful if we could just clarify that because --

THE COURT: No, let's let Mr. Colodny --

MS. SCHWARTZ: Okay. No problem. No problem.

THE COURT: -- proceed with his argument. Go ahead, Mr. Colodny.

MR. COLODNY: Thank you, Your Honor. Find where I left off. So Mr. Mashinsky and CNL's misrepresentations started from day one when it announced that the ICO was fully funded and that it sold $50 million of cell token. That was not true. From that point forward, as I said before, those misrepresentations pervaded Celsius' marketing. It was part of their sales pitch.

And I'd like to touch on a couple of those, which are not exclusive, but I think demonstrate what we are trying to accomplish here. First, Mr. Mashinsky repeatedly told people that Celsius was safer than a bank, but that wasn't -- that general statement was not it. He repeatedly told customers that Celsius passed 80 percent of its revenues back to those customers. That was not true. And

how do we know it wasn't true?

Well, first, as the examiner found, there's no evidence that Celsius at any point in time set its rewards rates based on its revenue. That's on Page 249 of the report. CNL also admitted as much. Indeed, when the U.K. regulators pointed that passing along profits made Celsius an unlicensed investment scheme, CNL quickly back pedaled and said that the rates as offered to customers were not tied to its profits.

Unlike account holders, the U.K. regulars didn't buy it. And instead of fixing the problem, the company fled to the United States, but it did not stop repeating that message to customers. It also fundamentally misrepresented the risk it was undertaking with account holders' assets. CNL and Mr. Mashinsky repeatedly told account holders it did not issue uncollateralized loans. Mr. Mashinsky made those statements in 2019, 2020, 2021, and as late as April 2022. Those are documented on Page 244 to 246 of the examiner's report.

Again, they were lies. Celsius had billions of dollars of uncollateralized loans. All customers thought Celsius was only investing in collateralized secured loans from reputable financial institutions. In fact, Mr. Mashinsky repeatedly said these are Wall Street institutions. That also was not true.

And how did account holders know that? Because CNL told them over and over and over again. Mr. Mashinsky was constantly promoting Celsius, and it wasn't just on the AMAs. It was at conferences, it was on public new broadcasts. One of the instances of the collateralized loans where Mr. Mashinsky specifically makes the point that there are no uncollateralized loans was on CNBC.

And I want to take a second to talk about the Bellwether Claimants. Now, I spent a lot of time with the Bellwether Claimants over the past couple of weeks, and I want to focus on Ms. Gallagher. You know, she watched an interview of Mr. Mashinsky that was broadcast on a program called Real Vision on April 18, 2021. That video she found on CNL's website, and this was before the migration happened.

In that video, Mr. Mashinsky states that Celsius does not issue uncollateralized loans. He also states that it passes 80 percent of its gross revenues back to account holders. He made those statements to induce people like Ms. Gallagher to deposit their crypto with Celsius. And in fact, Ms. Gallagher transferred substantially all of her life savings to Celsius.

Now, after that, Ms. Gallagher would watch each of Mr. Mashinsky's MNAs, a majority of which she would watch live. And that's important because we now know that

Celsius, starting in 2021, was editing the AMAs after they were broadcast live. One email I was looking at last night from Celsius' chief risk officer to its chief regulatory officer referred to this as a censorship process. Ms. Gallagher had no reason to know that what Mr. Mashinsky was telling her live was not in fact true because Celsius didn't tell her. Instead, they edited the videos.

Now, I keep returning to the examiner's opening line in his report, which I think really succinctly sums this up. The business model that Celsius advertised and sold to its customers was not the business that Celsius actually operated. And since the beginning of these cases, I've spoken to many Creditors.

I answer, try to answer, all of the emails I get. I try to pick up all the phone calls I get, and oftentimes they don't agree with our strategy. They don't agree with what we're doing, but the one thing they all agree on is that they were lied to. And I don't believe that anyone disputes that fact. Even the Debtors now.

Now to return to the matter that's before the Court, whether the Committee on behalf of a lead Plaintiff or a fiduciary should be able to file a class claim. As this Court stated in the MF Global opinion, that determination turns primarily on whether it will affect the administration of the place. Here, I don't believe there's

a question that it will aid the administration. As confirmed by the Bellwether process, there can be little argument that pro se Plaintiffs proceeding with protracted discovery is not conducive to the efficient administration of this estate, nor should other Claimants be bound by litigation against unrepresented parties.

The Court asked that this litigation be a fair fight, and our proposed process will provide that. Moreover, the Committee's conducted its own investigation, and we're prepared to move quickly here right alongside confirmation.

Now, the preferred equity holders argue that class certification will impose additional complexity, but that complexity is far outweighed by the burden that prosecuting thousands of individual fraud claims than non-contract claims would impose on the Debtors' estates. That's exactly why the Debtors began with the Bellwether claim process. And if the Debtors are not correct that all claims for fraud, misrepresentation, any other tort are limited to the value of the crypto on the platform, that's going to be an inevitability.

Now, the preferred equity holders also seem to say that we could never certify a class and prove reliance on a wide scale. We disagree. More importantly, it's not before the Court this time. And even if we can't prove common

reliance, we intend to bring statutory claims on behalf of Celsius as misleading advertising and deceptive business practices that do not require a Plaintiff to prove that element.

Now, the second factor, which I don't think is that instructive here, is whether a class was certified pre-petition. I found this argument by the preferred equity holders to be particularly astonishing to say that customers that were defrauded should've known to raise those claims before that fraud was uncovered. I just don't think that factor should be considered here.

The third factor, the bar date, I think it speaks in favor of allowing the class claim. As raised in our reply, we looked at the Certificate of Service, and it does not provide that the bar date was served on all account holders. I spoke with the Debtors last night. I understand it should've been served on all account holders, and they were confirming it. As of now, I don't know.

But the one thing that's been very clear from my conversations with account holders is that the 30 days for a pro se Creditor to put together and synthesize the examiner's report and file a -- what in essence would be a complaint on account of these actions is a tall task for anyone to accomplish.

And I want to point out that if the class -- if

Your Honor is -- permits us to move forward and we are able to file a claim, I think that we would -- or I know that we would request that the bar date be tolled so that thousands of Creditors are not required to file proofs of claims, protected proofs of claim, by the April 28th amended bar date.

Now, I want to get to my last point, which is the preferred equity holders and remarkably United States Trustee's argument that we are somehow violating our fiduciary duties by filing the motion. In Residential Capital, Your Honor found that the very nature of a Creditor's Committee is to represent varying creditor constituencies with divergent and sometimes even opposing interests. And each member is charged with a fiduciary duty to serve the interests of Creditors generally. A committee must guide its actions so as to safeguard as much as possible the minority as well as the majority. Very true.

But that does not mean that every time there is a conflict between unsecured Creditors the Committee must sit idly by. In ResCap, Your Honor cited the Circle K Corp. case, which is 199 B.R. 92, where Jude Bernstein explicitly noted that the Committee and its counsel often take positions against particular Creditors. For instance, Committee may object to a Creditor's claim. It also may obtain STN standing to sue third parties, which can include

Creditors. And it may also seek to equitably subordinate the claims of Creditors.

If the Committee couldn't act if there was a conflict between one particular creditor or a small group, it would never be able to take positions adverse to other creditors in these cases, which we've done. I will admit that. We have taken positions adverse to the withhold group. We have filed the claims in every box and litigated that issue. These claims were not raised in either of those actions.

And I would submit that the hallmark of a well-functioning committee has the ability to take positions on tough issues, which potentially have consequences for everyone. It's a bankruptcy case. When you take a piece of the pie away from one creditor, it goes to another, and it is to the detriment of that other creditor necessarily.

Here, at the request of the United States Trustee, the Court appointed an independent examiner to investigate the Debtors. We used the facts uncovered by that independent examiner to take a reasonable position that is entirely consistent with our fiduciary duties. And although that report is in evidence, it represents a thorough and independent recitation of the facts.

I don't believe that the existence of unsecured creditors and the mere fact that unsecured creditors exist

at CNL prevents us from taking an action to remedy the collective action problem that we face and witness firsthand. And I think that our fiduciary duties, in fact, compel that to ensure an equitable recovery for all Creditors.

However, to the extent the Court has an issue with that, we requested the alternative relief for an independent fiduciary to be appointed to bring the claim on behalf of all account holders. The point here is we think a collective process is the best way to go. You know, given our investigation, the process we've made on the claim thus far, we believe that it would be a waste of estate resources for another set of professionals to come in, and it would lead to unnecessarily delay. But the paramount concern here, as the Court said, is administrative efficiency in providing a collective process to vindicate the account holders' rights.

And finally, to respond to (Indiscernible)'s comments and put it explicitly on the record, this is no way meant to affect the voting process on a plan in any way, shape, or form. We are willing to stipulate to whatever relief to make it clear that account holders will get to vote on this plan, and this will not be the Committee allowing a billion dollar claim so that it can vote its preferred plan through. That decision is going to be for

account holders, and that will be done according to a disclosure statement in solicitation procedures that are approved by this Court. Unless Your Honor has any questions, I'll pass the podium to Mr. Leblanc. I think you're on mute, Your Honor.

THE COURT: I absolutely was on mute. And the words I say more often in a hearing is unmute, unmute. Okay. Let me ask you this hypothetical. Assume that the Court grants the Committee leave to file a class claim and you bring on a motion for class certification. And let's assume that I don't require independent fiduciaries to be appointed to do that. What is the timeline that you anticipate going forward assuming that, for example, the preferred holders strenuously oppose the relief that you'd be seeking? What's the timeline?

MR. COLODNY: So I think we can get our proof of claim on file by the bar date or shortly thereafter. And I believe we're prepared to move forward with the motion for class certification in the first or second week of May. I think it would be shortly thereafter putting it on file. Again, we're not looking to delay anything. And I think that the litigation schedule with respect to that class certification motion can proceed in line with confirmation.

I know there's been some disputes about the litigation schedule between Mr. Leblanc and his clients and

our clients and the Debtors. However, I believe that all can proceed together. You know, that would be based off of what amount of discovery is required with respect to that class certification motion obviously.

THE COURT: All right. Just bear with me another moment, okay? So I just -- I do want to briefly address the issue not yet resolved despite the fact that I've given plenty of time to do that is for the Committee and the Series B holders to resolve to see whether they can come to an agreement about a schedule with respect to procedures for estimating the intercompany claims with the Debtor. Have you been able to resolve that issue? The schedule.

MR. COLODNY: We have not, Your Honor.

THE COURT: All right.

MR. LEBLANC: Your Honor, this is Andrew Leblanc. I'm happy to speak to that whenever is appropriate, Your Honor. I know the Debtors moved that to an adjourned --

THE COURT: Yeah, but here's -- we'll get to the -- you know, here's what I'm going to do. My patience is running out. I think that I always -- my strong preference is for counsel to agree on a reasonable schedule that invariably I approve. But again, my patience is running out, and so I think, as I understand it, there was -- you have until the 20th, two days from now, to agree on a schedule.

And I'm just telling you, if you don't, I'm imposing a schedule. You may not -- neither of you may like it. One of you may like it. I don't know. Would you please resolve this? I mean, you're not that far apart on schedule. I can't believe you haven't resolved it. We don't need to talk about it anymore. You've got until the 20th to work it out, okay?

MR. LEBLANC: Your Honor, can I just speak to that topic just briefly, Your Honor? And the -- we've proposed a schedule. Both sides filed a motion to deal with one issue estimation. The Committee in their reply brief on Saturday added two additional issues that haven't even been --

THE COURT: Mr. Leblanc, Mr. Leblanc, I don't want to hear anymore about this. I'm just telling you you've got until the 20th to work it out. If you don't agree on a schedule, I'm imposing a schedule. It's as simple as that. There's no reason to take up time today talking about it further. I just want to get that message across. It's time for you to work it out. If you can't, I will just -- we won't have another hearing about it. I'll just impose a schedule, okay?

I think if the Court hadn't already agreed to give you all until the 20th to try to do that, I would just use my frustration today and just enter an order. So I'm not going to do that. I'm giving you another couple of days to

do it, okay? So Mr. Leblanc, go ahead and address the issue of the -- whether to permit the Committee to file a class claim.

MR. LEBLANC: I don't know if Your Honor wanted to hear from anyone else who's supportive of it, or you wanted me to just go now.

THE COURT: I want you to go now.

MR. LEBLANC: Okay. Your Honor, we've said, and you and I talked about this at the -- with the -- whether there were claims at every entity, that if there are fraud claims, those can be dealt with, and they can be dealt with. No one has suggested, including the Debtors or the Committee, how many people believe they have fraud claims against CNL. And I think it's critical to be clear about this.

And when Your Honor and I talked about this at the last hearing, I made the point that many people never even dealt with CNL at any point in time. Alex Mashinsky was the CEO of Celsius LLC at every point in time through its existence.

THE COURT: And do you -- was he also the CEO of CNL?

MR. LEBLANC: He was, Your Honor.

THE COURT: Okay. And you think that any communication have to have -- he's talking with out of both

sides of his mouth?

MR. LEBLANC: Your Honor, I believe that for somebody to establish that they relied on his capacity as -- where -- and I think you have to draw the distinction between people who were post-migration and pre-migration. For a party who came into the Celsius network joining only as a Creditor of Celsius LLC, the statements made by Mr. Mashinsky, for them to say that they were relying on him in his capacity as --

THE COURT: Oh, I'm sure, Mr. Leblanc, you'd be very happy for the amended bar date to run and very few earn Creditors having actually filed a proof of claim. What the Committee -- I think this goes to Mr. Colodny's point, I don't think it's necessary to -- because what I understand the law on class actions, if they -- if I permit them to file a class claim and it's not certified, the putative members of that class will be given an opportunity to -- will be advised that that's what's happened and will be given a further opportunity to file amended claims.

So I'm sure your constituency would be very happy if no more than a handful of amended claims were filed. That's not going to happen today, okay? I'm just telling you that right now.

MR. LEBLANC: Your Honor, we don't know how many claims have even been filed today. It's not as though the

Committee's coming here -- and MF Global, Your Honor, was a case where liability was conceded as to the issue. And the only issue for the class was how many vacation days did each of the 250 or so members of the class have. This is a very, very different situation. The Committee described it in their reply brief as -- and I'll quote it here -- somewhat novel. Your Honor, this is wholly unprecedented.

We didn't see this. We represented the Committee in Enron, Refco, Lehman. This isn't the process that was used. In none of those cases did a Creditor's Committee or we on behalf of the Creditor's Committee bring a class proof of claim on behalf of Creditors in those instances. We didn't -- it's not appropriate, and I'll leave Ms. Schwartz to the argument that they've made. We don't think it's appropriate, Your Honor, and it's just not what happens, and with good reason.

The Committee isn't even a member of the class that could bring a Rule 23 class action. We also do believe, Your Honor, it is inconsistent with their fiduciary duties. It's why creditors' committees don't file proofs of claim on behalf of individual Creditors, what they're proposing to do here. Your Honor, it should be left to -- we'll see how many customers, in fact, believe that they were defrauded when they filed proofs of claim, and we'll deal with those claims.

The notion that the Committee would file on behalf of 600,000 customers, some of whom may never have seen any of those videos, may never even -- don't -- may not even speak the English language and say that they were all relied upon, that they all relied upon these statements, I don't know how, Your Honor, that could happen consistent with Rule 11, and I don't know how that could be part of a certified class.

When I've seen this process, Your Honor, and I've seen it -- it's sparsely granted. I think everyone acknowledges that. It's scarce that you have class proofs of claim. When I've seen it, what the movant has done is they filed the motion seeking authority under 9014 to apply Rule 23, and they've included their proof of claim or their complaint that would allege that. And that's been true of cases that have had classes certified pre-petition or not -- or file pre-petition, and those that have not.

Here, and in large part I think because it did start, we had four days to respond to what is an unbelievably complex issue. And I think that's part of the concern that we have had. I think this is being rushed to try -- and the Committee was clear in the Tweet that they Tweeted about this, the reason they're doing this is because they're dissatisfied with Your Honor's decision on where claims sit. And this is just another mechanism that they've

now devised to try to deny the preferred equity any recovery.

We do not believe that this brings any measure of efficiency to the process, Your Honor. This litigation just over the class issues likely to run long past confirmation, and that doesn't even get to the question of liability and damages. We don't even know what the Debtors' position on the underlying merits of it are going to be. Are the Debtors -- and in particular, is the CNL estate and their directors, are they going to concede that they're liable to all customers for fraud?

THE COURT: Well, they took the position that they were liable, the customers. The Committee and the Debtor both believed that all of the entities were liable on customer claims. You prevailed, they didn't, but their position was that CNL was liable on customer claims.

MR. LEBLANC: They took the position, Your Honor, that they were liable on customer claims contractually. And you're right. They were wrong on that. I don't know what position the Debtors are going to take. I don't know if the Debtors are a Defendant defending this, or if this is going to again be left to the preferred equity holders to defend CNL from this liability.

THE COURT: I'm sure you'll do a very able job, Mr. Leblanc.

MR. LEBLANC: Your Honor, we'll do our best, but to put this additional burden into the system with the other issues that Your Honor doesn't want to talk about with respect to the schedule, it just doesn't -- there's no prospect that this is going to bring efficiency to the process as opposed to just inflating the number of claims that have to be dealt with, rather than just dealing with the claims that have been filed.

And it is not as though this Committee has been silent or been sitting on their hands. The Committee -- and we note this in our papers, Your Honor, the Committee has been actively encouraging parties to file fraud claims showing them how to do it. They have FAQs that they've put out on social media showing people how to file fraud claims. We should see what the fruits of that was. How many people actually believe that they have fraud claims --

THE COURT: I had that argument. Move on.

MR. LEBLANC: Your Honor, we do think that Your Honor should be considering the other elements of Rule 23 and considering whether to approve it under 9014. Obviously the full class certification analysis will only come when Your Honor -- when a motion is made for class certification and the complaint is actually filed. But for the reasons discussed in our papers, Your Honor, I think none of these issues are amenable to class certification and we shouldn't

belabor this point anymore.

It is an inefficient process that has never -- it's not somewhat novel, has never been used in the way that it's proposed to be used here, and it shouldn't be used in this way in this instance. Your Honor, unless you have any other questions, I'll pause there.

THE COURT: Thank you, Mr. Leblanc. Ms. Schwartz, I cut you off earlier. Do you want to be heard?

MS. SCHWARTZ: Yes, Your Honor. And I apologize because it appeared to me that Mr. Colodny might have read our papers to be critical of him. That really wasn't the intent. And so before he went down a whole colloquy about it, I thought --

THE COURT: Let me just say what my reading, that the U.S. Trustee argued that the motion seeks relief, that it isn't consistent with the Committee's fiduciary duty to all Creditors because it focuses only on one subsection, even if that subsection is a majority or large proportion of the committee. The U.S. Trustee believes that there are constituents of the Committee that would not benefit from the filing of the class action. So I'm not relying on Mr. Colodny's reading --

MS. SCHWARTZ: Okay.

THE COURT: -- of the response.

MS. SCHWARTZ: Then let me address that.

THE COURT: I'm relying on my own --

MS. SCHWARTZ: Right.

THE COURT: -- my own reading of it

MS. SCHWARTZ: Yeah. No, no, no, but what I -- all I wanted to say about that, Your Honor, which I thought would be helpful, is that where we said that it was filed in haste, the point was that there was only two weeks, and it was a very serious motion that was being filed. Because there's no question that the Creditors' Committee has a fiduciary duty that runs to every single one of its constituents.

It doesn't look like I'm impressing you with that argument, Judge, but what I'm trying to get across here is that we understand. And I think Mr. Colodny made a very compelling argument with regard to the difficulties of a body of Creditors that are largely, if not entirely, pro se. I completely understand that, and I completely understand the need for efficiency and the ability to have a good process. There's no question about that. Our problem --

THE COURT: But the amended -- the --

MS. SCHWARTZ: -- really --

THE COURT: Excuse me. The amended bar date, as I understand it, is April 28, 2023.

MS. SCHWARTZ: Right.

THE COURT: And you would -- you know, Mr. Leblanc

will love it if that bar date sticks and only a small number of pro se Creditors actually file amended proofs of claim. That's not going to happen, okay?

MS. SCHWARTZ: Okay. But Your Honor, what I --

THE COURT: Let me make it crystal clear.

MS. SCHWARTZ: Right, but what -- I understand that, Your Honor. I got that, but the one thing that I think that what we said to Your Honor was that it's really not the place for the Creditor's Committee to file this claim. They proposed an alternate process. They say, oh, where it's going to be taking -- it's going to take too much time, etcetera, it's a cost to the estate.

It may be a cost to the estate, but clearly where the cost is outweighed by the structure and integrity of the system which uses an unsecured Creditors' Committee to represent all constituents, that the better approach would be to have their independent person be able to do it. Because if in fact, Your Honor, they do file their motion for class certification, and let's say Your Honor actually grants the class certification, who's going to be counsel to the class? Is then counsel to the Creditors' Committee also going to be counsel to a class of the constituents?

THE COURT: Let me ask you, Ms. Schwartz. The Committee argued forcefully, was unsuccessful, but argued forcefully that all of the earn assets were property of the

estate. And a fairly -- you know, a sizeable number of pro se Creditors opposed that position. They said it's mine, not the Debtors'. Did Committee counsel violate a fiduciary duty of the Debtor when it took the position that it believed was the correct position? That actually on this they were successful, that it was property of the estate?

MS. SCHWARTZ: No, I --

THE COURT: There were plenty of people who argued the other side, but it --

MS. SCHWARTZ: I hear what you're saying, Judge.

THE COURT: No, wait. Stop. Does it happen all the time? No, but I've had lots of cases where the committee in a case takes a position that's contrary to the position of some of the people who are their constituency. I mean, that happens all the time.

MS. SCHWARTZ: That's right.

THE COURT: And the position of the U.S. Trustee is, no, they can't do that. Well, of course they can.

MS. SCHWARTZ: I don't think it's that broad, Your Honor. I wouldn't say that that's what we're arguing. What we're saying here is that what they're proposing here is something that, as Mr. Leblanc mentioned, has never before been done. They want to file a -- they're actually taking a formal class within the entire constituency. It's not clear from the motion, and I think that's part of the reason why

we said that it was filed in haste.

It's not clear what conflicts can arise between the -- who the Creditors are in the various creditor holder groups that they have. And also, Your Honor, that an unsecured Creditors Committee, also in the process when the United States Trustee appoints the members of the Committee, it is a fundamental principle that the Creditors Committee has a fiduciary duty to all of the constituents. And that to spend its effort to represent one group --

THE COURT: (Indiscernible) right back. No, wait a second now. The Committee took the position that all of the earn assets were property of the estate. That was not the position of all the Creditors. Are you saying they did something wrong when they took the position --

MS. SCHWARTZ: No. No.

THE COURT: -- that the earn assets were property of the estate? That's exactly a similar circumstance. Not everybody agreed with it. It wasn't because simply the Committee advocated for a position that the Court ruled the way it did. I evaluated all the arguments, including the pro se arguments, and some were represented by counsel.

MS. SCHWARTZ: Then I'm not clear. Then I'm not being clear, Judge.

THE COURT: Look, I've heard the argument. I understand --

MS. SCHWARTZ: But I didn't get --

THE COURT: I read the paper that your office filed.

MS. SCHWARTZ: Okay. Fair enough. But Judge, you know, I would just close by saying that we are -- I definitely understand the dynamics. I understand that you've allowed certain things in other cases. I think that this would be a poor precedent on a go-forward basis to permit Creditor Committee counsel to be representing in a separate process. And also, I would like an answer to the question would the Creditors Committee then, if the class was certified, be counsel to the class as well as the Creditors Committee?

THE COURT: Well, we'll have to wait until there's a class certification hearing if I grant the motion before me, and the U.S. Trustee can take the position that it wants. And it may be that Creditors Committee counsel will come up with a solution that, you know, satisfies everyone but Mr. Leblanc --

MS. SCHWARTZ: Well, that --

THE COURT: No.

MS. SCHWARTZ: -- well, we might -- but --

THE COURT: But you know --

MS. SCHWARTZ: -- Your Honor, the better --

THE COURT: -- I heard -- stop. Andrea, I'm done.

Stop. I've heard enough. I don't want to hear anymore, okay? There are a number of hands raised. Let me hear -- Mr. Koenig, do you want to be heard on behalf of the Debtor?

MR. KOENIG: Good morning, Your Honor. Chris Koenig, Kirkland and Ellis for the Debtor. Thank you. I'll be brief. We didn't file a pleading in support of or opposing --

MS. SCHWARTZ: Did you see the judge wave his hands to shut me up?

MR. KOENIG: -- the motion. We believe that --

MS. SCHWARTZ: That was bad. (Indiscernible) --

THE COURT: Andrea, mute your line, please. I could hear that. You're talking. You're muted now. I don't appreciate the comment you made about shutting you up, okay? It was completely inappropriate. Mr. Koenig, go ahead.

MR. KOENIG: Thank you, Your Honor. While we don't have a position, of course the Committee hasn't filed a proof of claim or a class claim motion. We'll have to review what is filed. We do believe that the process that the Committee is proposing is very reasonable and frankly will aid efficiency. As Your Honor knows, we've been struggling with the issue of how to deal with the claims that have been filed. We filed Bellwether objections and we've talked about at prior hearings how we were trying to

use that process to advance resolution of claims in this matter.

What we've done is we've pushed pause on the Bellwether claims process in light of what the Committee is suggesting, we've done that because we do believe that this is going to be a much more efficient process than having to deal with 23,000 claims on an individual basis. The Committee can deal with claims that are common to all account holders. That should aid the resolution process.

But you know, I find it very astonishing, frankly, that Mr. Leblanc is actually arguing that there's, I wrote it down, no measure of efficiency here. This is certainly going to be far more efficient than what the alternative is, which is for each and every individual Creditor to have to receive an amended bar date notice, decide whether they have a claim to be filed, and file claims.

I note that the Debtors have 600,000 account holders approximately. Only 23,000 claims were filed prior to the original bar date. That's about three percent. And so you know, certainly we -- you know, Creditors are advised of their rights and are receiving mailings and emails and, you know, hopefully are filing what they need to file. But in this case in particular when you have so many pro se Creditors who are similar situated to one another, it would be unfair to expect each and every one of them to file a

claim by an amended bar date on 35 days' notice.

We believe that this process is far more efficient and is likely to lead to, as Mr. Colodny said, a fair fight on the merits between the Committee, the Series B, and we'll see what position the Debtors take after the Committee file their papers. But we believe that there is significant efficiency, as Mr. Colodny said, compared to the Bellwether claims objection process, which was what we devised when there were individual Creditors. But given now that the Committee is going to be advancing a common argument on behalf of all Creditors, we think that that will be far more efficient. So --

THE COURT: Thank you.

MR. KOENIG: -- I'll pause my remarks there. Thank you, Your Honor.

THE COURT: Thank you, Mr. Colodny. All right. I have all these arguments down on this. I've spent a lot of time on this motion. I don't need to hear anybody else. I'm approving the motion, granting the Committee leave to file a class claim. This does not resolve the issue of whether the class is going to be certified or whether there are -- well, we'll see how that does.

Let me give a brief statement of reasons. I'm not going to write an opinion on it as I don't want to slow the process down. Some of these issues will be dealt with when

I rule on any motion for class certification. But class actions in bankruptcy, certainly in contested matters, they're at the discretion of the bankruptcy court, and I apply Rule 9014. Bankruptcy Rule 9014 applies only to contested matters, but authorizes the bankruptcy court on motions to direct that one or more of the rules of Part 7, which includes 702.3 shall apply.

While most courts agree that class proofs of claim are allowed in bankruptcy proceeding, the right is not absolute. I've written on this issue before in MF Global and in other cases as well. And although the exercise of discretion is necessarily case-in-fact specific, bankruptcy courts generally consider three factors in determining whether to apply Rule 23 to claims process.

One, whether the class was certified pre-petition. Here it's not, but pre-petition -- the alleged facts establishing fraud were not known. Whether the putative class members received notice of the bar date, well, there's an amended bar date, but it's totally unrealistic to expect that 600,000 or even a fraction of those people will file an amended proof of claim.

While the focus of Mr. Leblanc and others has been on a fraud claim where reliance may or may not be required under these circumstances, there may well be statutory claims that don't include the same reliance requirement.

When I wrote the opinion on against which entity claims would reside, I made clear that that was only a ruling with respect to the contract claims. And so there may be both common law claims and statutory claims, so I don't know the full range of claims that may be asserted in a class proof of claim.

And the third factor is -- the second factor was about notice of the bar -- amended bar date. I talked about that, and whether class certification would adversely affect administration of the estate. Those are the three factors that I will refer to as the Music Land factors, 362 B.R. at pages 654 and 655. I won't go through a separate discussion at each of the Musicland factors, but I've certainly considered it with respect to this pending motion.

Here, it seems that equitable considerations weigh strongly in favor of granting this motion. In considering a request for class proofs of claim filed by creditors, the Court of Appeals in the Fourth Circuit held that Bankruptcy Rule 7023 is an equitable manner to give effect to the purposes of the Bankruptcy Act. See Gentry v. Siegel, 668 F.3d 83, 89 (4th Cir. 2012). I consider these equitable considerations to be highly relevant here.

A minority of the 600,000 putative class members are represented by counsel, and none of them have had enough time to review the customer claims opinion or research

theories. And the Committee has appealed from the customer claims opinion, as it certainly could.

A significant portion of the claimants do not have and have not ever lived in the United States and are completely unfamiliar with the American legal system. Indeed, the pro se creditors who have filed papers on this motion are highly supportive of the Committee's motion to proceed to class or by any other collective process available.

Denying the motion is likely to result in only the sophisticated and representative claimants submitting their claims prior to the amended bar date to the detriment of the great majority of creditors. That outcome goes against the fundamental tenet of bankruptcy, which is a fair and equitable distribution of assets to creditors.

I've certainly taken seriously the Series B preferred holders' objection. It's premature. They will no doubt litigate strenuously whether the class should be certified and the Court will deal with that when it arises.

Mr. Colodny, submit the order in Word format and it will be entered. Let's move on on the agenda.

MR. COLODNY: Thank you, Your Honor.

MR. KOENIG: Thank you, Your Honor. I'm going to cede the lectern to Mr. Kwasteniet, who will handle the balance of the agenda. We're at the status conference

section of the agenda this morning.

THE COURT: Okay. Go ahead, Mr. Kwasteniet.

MR. KWASTENIET: Ross Kwasteniet again from Kirkland & Ellis on behalf of the Debtors. I believe that brings us to Item 16 on the agenda.

Your Honor, we previously filed at Docket 2336 Debtor's motion to approve a key employee incentive plan. Your Honor, we requested adjournment of that motion as we are continuing to engage in active discussions with counsel to the committee as well as the U.S. Trustee's Office about the design, the metrics, who should be included in that program. We are hopeful that with additional time, we'll be able to resolve or narrow objections to the proposed KEIP. And that has been adjourned to our May omnibus hearing, Your Honor.

THE COURT: All right.

MR. KWASTENIET: Your Honor, the next items on the agenda are related, and I am aware that Your Honor has adjourned those to a future hearing date. They include a request from an individual employee for reimbursement of legal fees as well as the Debtor's motion for approval of procedures pursuant to which the Debtors may pay legal fees for employees current and former who cooperate in the various ongoing investigations.

As I understand it, Your Honor, you had asked for

a status conference today, so I'm happy to answer any questions, hear any remarks you have, or say anything that you would like me to in connection with either of those. And I believe also counsel for the individual employee, Mr. Nolan, is on the line and should be available to address that application for reimbursement, Your Honor.

THE COURT: No, my comment would be this. And I'll certainly give Mr. Nolan's counsel an opportunity to address it. So there was on the docket for today the application of Connor Nolan pursuant to 11 U.S. Code § 503(b)(3)(D) and 503(b)(4) for allowance and payment of professional fees. His application is at ECF Docket 2045.

There also has been I think adjourned several times is the Debtor's motion for approval of fees. I don't have the exact docket number, but it's for -- with cooperation agreements, reimbursement of fees. And I thought they could be handled together. I mean, Mr. Nolan is certainly entitled to have his motion heard. But the issues really are very much the same in the Court's view. And that's why I adjourned Mr. Nolan's application as well.

You know, Mr. Colodny, let me ask, does the Committee -- where are these discussions going? And then I'll ask Ms. Schwartz as well if she wants to address the issue. I'm not deciding it today. This is really a status conference. Go ahead, Mr. Colodny.

MR. COLODNY: Yes, Your Honor. What the Debtors proposed was a procedures motion to provide for a framework through which we could both determine whether employees' cooperation and the reimbursement of their expenses is for the benefit of the estate. And what Mr. Kwasteniet made clear in the motion and we've been discussing since then is that no expenses would be paid without both the Debtor and the Committee consent and full disclosure.

We've been working I think cooperatively with Mr. Kwasteniet to reach an agreement and also been working cooperatively with the United States Trustee.

I sent revised forms of order over the weekend before -- I believe it was Friday before Your Honor adjourned the hearing. And I think that we were fairly close. But we're not there yet. And I completely agree with Your Honor that the reimbursement of Mr. Nolan should either be dealt with with those procedures if we are able to reach agreement, or separately on his own application if the procedures are not able to move forward.

So I think where I sit on it is whether the payment of fees benefits the estate is going to be an extremely detailed and fact-intensive determination. And I believe that together the Debtors, the Committee, and the United States Trustee can make that determination. And I hope we can get there on the procedures to find a way that

we can strike the appropriate balance of making sure that any payment benefits the estate.

THE COURT: All right. Ms. Schwartz, do you want to be heard on this?

MS. SCHWARTZ: Thank you, Your Honor. Andrea Schwartz for the U.S. Trustee.

We are having continued discussions with the Committee. We have some fundamental differences, but we are trying to work through to see as much progress as we can make on it.

THE COURT: Okay. Look, you know, one way or the other either as -- hopefully if it can be resolved consensually, fine. I mean, if it can't, then there's a contested motion, the Court will deal with it. So we'll leave it at that for today. Okay? All right.

Anything else that we have to cover?

MR. KWASTENIET: Thank you, Your Honor. I believe that's it on the agenda. And the Debtors did not have anything further for today.

THE COURT: Okay. Anybody else have any issues they want to raise?

Mr. Herrmann?

MR. HERRMANN: Yes. Immanuel Herrmann, pro se creditor. Thank you, Your Honor. Just a quick thing. I think it would extraordinarily helpful if a transcript of

today's hearing could be posted. And I also wanted you to consider -- I mean, I can file a motion, but maybe sua sponte it would be I think very helpful to creditors if we could get transcripts for every hearing basically going forward and backwards. I know there's redaction issues and other issues. But I think for transparency and just going forward, it would be extremely helpful.

THE COURT: I won't rule generally. I would request that Debtor's counsel order a transcript for today, that it can be put on. I'm not sure, Mr. Herrmann, I agree that every hearing we've had is worthy of having a transcript posted. There actually have been some not controversial hearings that we've had.

MR. HERRMANN: That's true, Your Honor. Well, thank you. I appreciate that. And I'll look at filing a motion or just talking with the Debtors and others about --

MR. KOENIG: Your Honor, with your permission, we will order a transcript and then file a notice on the docket that attaches a transcript when it's available.

THE COURT: Great. Thank you very much. All right.

Mr. Holcomb? Mr. Holcomb, you need to unmute if you want to be heard.

MR. HOLCOMB: I'm sorry. Can you hear me, y h?

THE COURT: Yes, I can. Go ahead.

MR. HOLCOMB: Thank you, Your Honor. Lucas Holcomb, pro se creditor. I've been watching these court proceedings since the case began and I've learned that pro se creditors, including myself, have no idea how to effectively represent ourselves in court. So I do appreciate the approval of the classifying motion.

I would like to bring up an issue I've had with the Debtors since approval of the Pure custody withdrawals, which, again, as a pro se creditor I'm not aware if this is the correct process to present this dispute. But since the Pure custody withdrawal began, I have several -- in fact, four accounts with the debtor. And I completed KYC verification on all four of them. And then I started my withdrawal process. There was about $500 in each account that was in Pure custody. And I had about $100,000 in Earn split between those four accounts.

I did start that withdrawal process. But unfortunately, the withdrawals never came through. And in attempt to log in, I found that my accounts were suspended. I had an email exchange with the Debtors, I believe it was March 2nd, with the customer service. And I complete another third-party KYC verification at their request.

However, the customer service discontinued responding to my emails as of March 21st with no resolution to unsuspending my account and allowing me to withdraw my

Pure custody assets. And since then, I'm been in contact with (indiscernible), but we have been unable to (indiscernible) resolution on the matter.

THE COURT: Mr. Holcomb, let me ask you this. I know you said you've been exchanging emails. Have you been able to speak with one of the lawyers from -- the Debtor's lawyers at this point or just exchanging emails

MR. HOLCOMB: I've been exchanging emails with Celsius creditors answers, and they've responded several times. And they've said we are attempting to resolve this issue with the company and appreciate your patience. But again, it's been going on for a little bit now.

THE COURT: Mr. Koenig, I see you've moved in front of the microphone. Can you address this?

MR. KOENIG: Again, Chris Koenig for the Debtors. Thank you, Your Honor.

So, yes, I've been corresponding with members of our team. We've been in contact with Mr. Holcomb. The issue is that his accounts are suspended under the Debtor's procedures. So we need to continue to work through that. We've been exchanging emails with him, and we're happy to continue to do so. But --

THE COURT: Let me ask this. Either you or designate someone from your team speak with Mr. Holcomb by telephone. I mean, it can be -- I mean, emails are fine,

but it can be frustrating sometimes going back and forth. If it can't be resolved, Mr. Holcomb will have to, you know, seek to get relief from the Court. But would you please reach out and speak with Mr. Holcomb and see whether the issue can be resolved and you can narrow exactly what needs to be done? Okay?

MR. KOENIG: We certainly will. Thank you.

THE COURT: Okay. Mr. Holcomb, let's move forward on that basis. I don't have facts on which I can rule at this stage. So let's see if you can cut through it by speaking directly with either Mr. Koenig or one of the other lawyers of Kirkland. Okay?

MR. HOLCOMB: Thank you, Your Honor. I appreciate that. And I've just emailed him my phone number so he can contact me. Thank you so much.

THE COURT: Great. All right.

Mr. Porter?

MR. PORTER: Thank you so much, Judge.

Judge Glenn, I asked you take into consideration the fact that we --

THE COURT: You've just muted again, Mr. Porter.

MR. PORTER: I'll start again, Judge. I apologize.

THE COURT: Go ahead.

MR PORTER: I asked you to take into consideration

the fact that we were lied to and most of us are typical retail depositors who fell for Celsius' marketing scheme.

Sir, we need to maximize our recovery as creditors and move on with our lives. Under ordinary circumstances, most of us would never consider investing in a hedge fund that has no track record. This would not be a suitable investment for most of the depositors. Please make sure that we are permitted to see all of the competing bids at the appropriate time. The offers that compete with NovaWulf's plan to lock us up into a hedge fund. Please empower our UCC to give the appropriate weighting to our assets on deposits, not the number of creditors with very small balances.

Creditors fear a cramdown of NovaWulf's hedge fund plan and we hope to avoid that fate. Allow us to maximize our recovery as soon as possible. We are anxious to put this Celsius experience behind us. Thank you.

THE COURT: Mr. Ivene?

MR. IVENE: Jason Ivene, pro se creditor.

I just wanted to see if there was an update on assets sent in after the petition date. Because I've seen no updates or anything.

THE COURT: Okay. I understand that issue. And maybe, Mr. Koenig, can you address that? Because that's been discussed at prior hearings. Obviously it was after

the pause and assets were received and they were sort of -- go ahead.

MR. KOENIG: Thank you, Your Honor. We're in the process of filing the schedule of eligible creditors, and I expect that that's going to be filed in the coming days. It's taken a little bit of time, obviously, but we have had other withdrawals that we've been working on processing. And that is next up in the queue, and it will be filed in the coming days. I expect this week.

THE COURT: Okay. Thank you very much.

Mr. Mendelson.

MR. MENDELSON: Good afternoon, Judge. Thanks again for your time.

Very quickly, regarding the class claims, are we allowed to go after the C-suite level executives, the individual executives at Celsius, Alex Mashinsky and Daniel Leon, Nuke, et cetera? Or is it just against business entities?

THE COURT: So, look, I can't give you legal advice. I would just say this. There already has been litigation that's been filed against Mr. Mashinsky and others. And the automatic stay does not apply by its terms to anyone other than the Debtor. So I'm not going to give you any legal advice. You're not the only creditor with an interest in pursuing a recovery from any source that's

available. I'm going to leave it at that. That's not my role here.

MR. MENDELSON: Okay. Thank you.

THE COURT: (indiscernible).

MR. PELED: Thank you, Your Honor. I represent Ignat Tuganov, who filed a response --

THE COURT: You have to -- stop. Just identify you -- I called you by your name, because I see it on the screen.

MR. PELED: No problem.

THE COURT: I may have mispronounced it. But you have to identify yourself.

MR. PELED: Arie Peled of Venable LLP on behalf of Ignat Tuganov. We filed a response to the class claim motion. Your Honor, you ruled on the motion, so I'm not going to get through any of those points. I just wanted to make one point if I could with respect to the proposed order. And you mentioned it when you were discussing it, that you envisioned that customers would be able to file an individual claim if ultimately class cert is denied. We were just hoping that that could be made explicit in the order somewhere so that people have that comfort with respect to the procedure going forward.

THE COURT: I guess my response to that would be to work with the Committee's counsel. I thought that there

had been an agreement on modifying the form of the order to deal with that. Obviously your client has already filed a claim, filed a lawsuit that raises many of these same issues. So I'm going to leave it at that.

MR. COLODNY: Your Honor, we included some language in the proposed order --

THE COURT: You have to identify -- Mr. Colodny, you have to identify yourself for the record when you speak.

MR. COLODNY: Sorry, Your Honor. Aaron Colodny from White & Case on behalf of the Official Committee of Unsecured Creditors.

We included language in the proposed order which was meant to address Mr. Tuganov's objection. We didn't get a chance to discuss it with his counsel.

I would propose, and I think the Debtors -- well, I'll let Mr. Koenig speak for himself. But we can include in the proposed order some language that embodies your Court's -- Your Honor's oral ruling that the bar date will be told pending class certification.

THE COURT: That's fine. Okay. Mr. Turpin?

MR. TURPIN: Basically I think I might just have the same question that was just addressed. So I'm James Turpin, pro se. And I just wanted to know if the -- if the class claim is not certified, is the bar date going to be extended?

THE COURT: Yes. The answer is yes.

MR. TURPIN: Okay. Because I think many of us have not retained counsel.

THE COURT: Right.

MR. TURPIN: And if we're out of state or -- obviously you mentioned there's many people out of the country. And so it's -- it would be very costly to retain counsel unnecessarily.

THE COURT: I agree with everything you've said. And my understanding of class action law is if a class certification motion is denied, the putative class members will be given opportunity to either file a claim or a lawsuit as they choose. So that will have to be dealt with in any order that's entered if class certification is denied. But that is certainly what my intention is, and it's certainly my understanding of what the state of the law with respect to denial of class certification is.

MR. TURPIN: Thank you, Your Honor.

THE COURT: Okay. All right. Mr. -- don't know whether it's -- I guess Ms. Kuhns. Excuse me. Go ahead.

MS. KUHNS: Yes, Your Honor. Good morning or good afternoon. I guess it's afternoon now. Joyce Kuhns for the Ad Hoc Group of Earn Account Holders.

First of all, I wanted to extend my appreciation to the Committee for looking forward to a collective

process. You've heard today that this has been time-consuming, complicated, and burdensome. And particularly to the Earn account holders. And so we are looking forward to working hopefully cooperatively with the Committee and the constituents to a mutually-beneficial result. I think that a collective voice has been missing, obviously, on behalf of the Earn accountholders. And as I said, I hope we can streamline this process to make it the most effective one for all involved and the most efficient with the least cost.

THE COURT: Thank you, Ms. Kuhns.

All right. Anybody who has not been heard yet wishes to be heard?

All right. The Court is going to stand in recess. We are adjourned.

(Whereupon these proceedings were concluded.)

I N D E X

RULINGS

	Page	Line
Settlement, GRANTED	49	2
Motion to Approve the Wohlman Settlement, GRANTED	53	12
Motion for Committee to File a Class Claim, GRANTED	83	19

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

Veritext Legal Solutions

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Date: April 19, 2023

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& 3:16,16,21 4:1,13,18 7:3 7:12,19 8:8 9:1 9:16 11:16 12:1,8 87:4 98:10

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05/17/2023 6:17,25
05620 10:3
07068 10:17
07102 12:18

1

1 5:5,13 8:10 19:13 42:21 51:8 52:12
1.3 44:13
10 6:4,17
10/10/2022 6:6
10/31/2022 3:17 4:2,8,14 6:6
100,000 52:23 92:15
10004 1:14
1001 4:14
10014 11:4
10020 11:19
10022 7:22 10:10
1003 6:12
10036 11:12
1006 11:3
10119 9:19
10167 8:18
1071 3:18
1072 4:3
10:00 6:18,25
10:02 1:17
11 6:21 28:16 72:7 88:10
111 12:10
1114 6:12
1130 6:12
1132 6:13
1133 6:13
1139 6:13
1140 6:13
1144 6:13
11501 102:23
1177 6:13
1182 6:13
11th 53:10
12 17:15 101:7
1200 6:13
1204 6:13
12151 102:6
1221 11:18
1224 4:22
1274 5:14
1275 5:14
1283 6:14
1287 5:6
13 3:25 48:7
13,000 17:4
1301 7:14
1366 6:14
1374 5:15
138 18:17
14 17:14
1407 4:3
1408 5:6
1419 4:14
1450 4:22
1451 3:18
15 43:3 44:14 45:3
151 11:11
15th 15:9
16 17:14 87:5
1606 5:6
1612 5:22
1635 4:22
166 18:17
1668 4:3
1685 6:7
1688 4:15
1694 6:14
16th 15:14
17 15:16
1705 3:18
1707 4:3
1709 4:8
1710 4:14
1712 40:3
1715 4:22
1716 5:6
1717 6:7 40:4
1718 5:14
1719 6:6
1720 5:22
1721 3:18
1736 3:18 4:3,8 4:15,22 5:7,15 5:22 6:7
1740 6:7
18 1:16 36:25 59:13
1800 9:11
1823 3:18 4:3,8 4:15,22 5:7,15 5:22 6:7
1841 6:14
1850 9:3
19 101:9 102:25
1907 6:14
199 63:21

2

2 5:21 42:21 101:5
20 29:24 30:12 36:16,23
20004 7:15
20006 9:4
2007 49:9
201 11:3
2012 85:21
2019 58:17
2020 58:17
2021 58:17 59:13 60:1
2022 3:25 4:1 4:21,22 5:5,6 5:14,14,21,22 6:4,5 28:23,23 51:8 58:17
2023 1:16 2:4 28:24 76:23 102:25
2045 6:24 88:12

2055 6:14
20th 67:24 68:7,15,23
21 2:4
2170 39:24
2181 6:14
21st 16:3 92:24
22,000 19:2
22-10964 1:3
23 71:18 72:14 74:19 84:14
23,000 82:7,18
2331 2:16 53:8
2334 2:11 42:5 42:14
2335 2:5 26:8
2336 6:14 87:6
2337 6:14
2339 6:15
2340 6:15
2343 6:15
2367 2:23
2369 3:4
2371 3:4
2373 6:24
2374 6:24
2382 6:24
2386 6:24
2387 3:18 4:3,8 4:15,23 5:7,15 5:22 6:7,24 32:4
2395 6:15
2396 3:11
2397 6:15
2399 3:11
2400 3:11,12
2401 6:15
2404 6:15
2408 6:15
2411 6:16
2413 6:15
2416 2:16 50:24 51:5 53:11
2430 6:16
2432 3:11
2434 6:24
2438 2:23 3:4
2439 3:4,12,12
244 58:18
2441 6:24
245 8:17
2458 2:5 26:25 27:6
246 58:18
2460 2:6 26:12 27:2
2467 3:12
2468 3:12
2471 2:23
2472 2:23 3:4
2473 3:4
2474 3:12
2476 3:12
2477 3:4
2478 2:23
2480 2:23 3:4
2481 6:16
2482 3:12
2483 3:18 4:3,9 4:15,23 5:15 5:22 6:7
2484 3:12
249 58:4
2490 14:10
2491 16:13
24th 16:20
25,000 17:22
250 71:4
261 34:5
262 34:10
2700 12:3
28 18:18 76:23
28,000 18:2
28th 22:3 63:5
29 4:21
2nd 15:12 92:21

3

3 6:21 42:3 88:11
30 47:4 62:20
30,000 17:8 19:3
300 7:5 102:22
31 4:1,22 5:6 5:14,22 6:4
32 15:15
330 102:21
3335 9:18
35 83:1
350,000 52:24
362 85:11
37 16:20
37,000 18:9
38th 13:3

4

4 6:21 88:11
4/18/2023 6:17
4000 9:11
42nd 11:11
45 17:3
45,000 17:1 18:1
452 49:9
476 56:16
478 49:9
48075 9:12
49 101:5
49th 11:11
4th 85:21

5

5 16:20
50 45:6 57:15
500 8:10 92:14
503 6:21,21 88:11,11
50th 8:3
5100 12:10
53 101:7
53711 8:11
55 16:22
555 8:3 12:3
570 12:17
58,000 18:6,6
59 17:18
590 10:9

6

60 45:7
600,000 72:2 82:17 84:20 85:23

601 7:21
60606 12:11 13:4
60654 7:6
65 15:15
654 85:12
655 85:12
668 85:20
68 15:10
6th 10:9

7

7 17:21 84:6
7/13/2022 3:17 4:2,8
7/14/2022 4:14
702.3 84:7
7023 85:19
72 45:6
72.5 16:14 44:21,22
737 42:19

8

8 42:6,11
80 57:24 59:18
83 85:21 101:9
85 43:4 45:3
85,000 52:14
89 10:2 85:21

9

9 28:15
90 15:12
900,000 17:9
90071 8:4 12:4
9014 72:13 74:20 84:4,4
9019 43:10 49:3
917 6:12
92 63:21
99 36:14
997 6:12

a

aaron 12:6 54:4 98:9
ability 25:7 64:12 76:18
able 25:25 26:23 29:17 32:16 35:14 49:25 60:22 63:1 64:5 67:12 73:24 77:17 87:13 89:17,19 93:6 97:19
above 36:22
absent 52:6
absolute 84:10
absolutely 55:15 66:6
access 14:14
accessible 34:15
accomplish 57:21 62:24
accordance 16:10
account 3:9,11 9:10,17 10:8 15:7,10 16:14 16:17 34:22 45:17,25 54:10 54:11,13,25 55:12 56:5,6,9 58:10,14,15 59:1,18 62:15 62:17,20,23 65:9,16,22 66:1 82:9,17 92:14,25 99:23 100:3
accountholders 100:7
accounts 16:2 16:15 92:12,16 92:19 93:19
accurate 102:4
acknowledged 54:15
acknowledges 72:11
act 64:3 85:20
action 10:15 42:24 65:1,2 71:18 75:21 99:10
actions 54:23 62:23 63:16 64:10 70:15 84:2
active 33:15 87:9
actively 34:2 74:12
actually 23:22 30:21 33:4 48:6,8 53:18 60:12 70:12 74:16,23 77:2 77:19 78:5,23 82:11 91:12
ad 2:10 8:16 9:10,17 10:8 16:4 42:8,18 42:22,25 44:12 45:17 46:21 47:14,17 49:17 49:24 54:21 99:23
added 68:12
addition 16:7 19:25 26:9 45:21
additional 21:1 21:3 22:6 52:4 61:13 68:12 74:2 87:12
address 35:14 43:19 55:13 67:6 69:1 75:25 88:5,9 88:23 93:14 95:24 98:13
addressed 98:22
addresses 53:12
addressing 29:7
adjourned 28:17 67:17 87:14,19 88:13 88:20 89:14 100:14
adjournment 87:8

adjusted 17:9 17:12,13
adjustment 35:25,25 36:8
adjustments 37:22 41:3,6
adler 8:20
administration 60:25 61:1,4 85:10
administrative 65:15
admissible 56:16,21
admit 64:6
admitted 51:5 58:5
admitting 51:4
advance 82:1
advancing 83:10
adverse 64:5,7
adversely 85:9
advertised 60:10
advertising 56:8 62:2
advice 96:20 96:24
advise 22:25 31:21
advised 29:22 30:10 70:18 82:20
advisor 2:4 5:12 6:3 26:8
advisors 26:1
advisory 5:2
advocate 54:24
advocated 79:19
advocating 55:3
affect 60:24 65:20 85:9
afternoon 54:4 96:12 99:22,22
agenda 14:3 19:16,18 20:21 25:11,16 26:6 28:24 29:17 42:2,3 50:3,12 54:2 86:21,25 87:1,5,18 90:18
aggregate 43:23
aggregator 44:5
agree 24:4 30:25 48:21 60:16,16,17 67:21,24 68:15 84:8 89:15 91:10 99:9
agreed 32:11 32:24 43:1 68:22 79:18
agreement 17:3 26:2 39:16 42:7,12 42:16 46:22 51:16,17,18 52:12,13,16,19 67:10 89:10,18 98:1
agreements 18:5 88:16
ahead 21:10 24:15,22 25:13 26:2,3 28:13 31:6 37:11 39:6 42:2 46:12 48:16 50:22,23 51:6 51:8 54:7 57:11 69:1 81:16 87:2 88:25 91:25 94:24 96:2 99:20
aid 61:1 81:22 82:9
akin 3:21 4:1
alert 24:16
alex 69:18 96:16
allegations 54:19
allege 72:15
alleged 38:8 52:1 84:16
alleging 51:25
allen 7:25
allow 28:17 36:16,16 55:1 95:15
allowance 3:23 6:22 88:11
allowed 15:13 36:18 37:1 80:7 84:9 96:15
allowing 62:13 65:24 92:25
alongside 61:10
alternate 77:10
alternative 65:7 82:13
alternatively 54:10
alvarez 4:13
amas 59:4 60:1
ambiguity 48:2
ambiguous 48:2
amenable 74:25
amended 14:3 55:21,23 63:5 70:11,19,21 76:20,22 77:2 82:15 83:1 84:19,21 85:8 86:12
america 4:13
american 86:5
americas 11:18
amount 32:22 44:11 52:22 53:20 67:3
amounts 45:13
amulic 11:23 48:13,15,17,17 48:20 50:4,7

analysis 32:23 40:1 74:21
analyze 21:11
analyzing 21:14 22:19
andrea 11:7,23 27:9 31:7 37:10 48:17 80:25 81:12 90:5
andrew 9:6 10:19 67:15
angeles 8:4 12:4
announced 57:14
answer 46:8 53:4 60:14,14 80:10 88:1 99:1
answers 93:9
anticipate 66:13
anxious 95:16
anybody 27:24 37:25 38:25 39:11,13 40:22 48:11 53:6 83:18 90:20 100:11
anymore 68:6 68:14 75:1 81:1
apap 9:14
apart 68:4
apologies 24:19 50:7
apologize 75:9 94:23
appealed 86:1
appeals 85:18
appeared 75:10
applicable 49:13,14
applicant 41:5
applicants 28:16
application 2:2 3:15,21 4:6,12 4:18 5:2,10,18 6:2,20 26:7,11 26:14,21 27:16 28:2,5 29:8,12 36:2,18 38:3 39:24 41:3 88:6,10,12,20 89:18
applications 28:20,25 29:10 29:14 31:23 32:5,7,13 35:21 36:9,14 39:9,17 41:10 41:16
applies 20:19 84:4
apply 49:7 52:5 72:13 84:4,7,14 96:22
appoint 3:9
appointed 32:10 52:17 64:18 65:8 66:12
appoints 79:6
appreciate 24:4 32:2,4,5 33:21 49:23 81:14 91:15 92:6 93:11 94:13
appreciation 17:12 99:24
appreciative 32:16
approach 54:25 55:2,4 77:16
appropriate 28:5 33:17 35:17 45:12 46:6 49:16,19 52:5 67:16 71:13,15 90:1 95:9,11
approval 22:22 29:11 35:22,23 36:7 40:24,24 41:10 43:20 87:21 88:14 92:6,8
approve 42:4 49:20 53:7 67:22 74:20 87:7 101:6
approved 16:3 28:5 31:3 37:19 39:18 41:10 52:17 66:3
approving 2:9 2:14 6:10 16:7 49:2 50:13 53:12,17,23 83:19
approximately 17:22 36:25 82:18
april 1:16 15:14 16:20 22:2 53:10 58:17 59:13 63:5 76:23 102:25
apropos 33:24
argue 61:12
argued 75:15 77:24,24 78:8
arguing 78:20 82:11
argument 30:19 57:10 61:3 62:7 63:9 71:14 74:17 76:13,15 79:24 83:10
arguments 79:20,21 83:17
arie 11:14 97:13
arises 86:19
arising 30:5
arose 20:23
articulated 35:8

asked 33:12 52:2 61:7 87:25 94:19,25
assert 3:10
asserted 85:5
asserting 3:8
asset 46:2
assets 16:1,5 16:10,15 26:19 42:25 44:7,13 46:19 47:16 58:14 77:25 79:12,16 86:15 93:1 95:12,21 96:1
associated 44:15 52:25
assume 34:10 66:8,11
assuming 66:13
assure 22:11 25:1
astonishing 62:8 82:10
attached 42:13 52:12 53:8
attaches 91:19
attempt 92:19
attempting 93:10
attorney 3:17
attorneys 7:4 7:13,20 8:2,9 8:16 9:2,10,17 10:8,15 11:2 11:10,17 12:2 12:9,16 13:2
attributable 19:4
auction 21:18 22:16
august 5:5,13 5:21
authority 3:8 51:19 52:2 55:11 72:13
authorized 16:8,16
authorizes 84:5
authorizing 2:2
automatic 52:3 52:6 96:22
available 51:1 86:9 88:5 91:19 97:1
avenue 7:14,21 8:17 10:9 11:18
average 17:21
averts 44:1
avoid 95:15
await 37:5
awarded 35:18
aware 35:11 37:13 87:18 92:9

b

b 1:21 2:18 6:21,21 9:2 39:23 40:9 56:22 67:9 83:4 86:16 88:11,11
b.r. 63:21 85:11
baby 45:21
back 16:10 17:12 19:9 21:24 38:9 39:18 42:2,19 45:25 57:25 58:7 59:18 79:10 94:1
background 27:20 51:8 53:3
backwards 56:25 91:5
bad 81:11
balance 15:20 86:25 90:1
balances 15:19 95:13
bank 57:22
bankruptcy 1:1,12,23 43:10 49:4 56:15 64:14 84:2,3,4,5,9,12 85:18,20 86:14
bar 55:21,23 62:12,15 63:3 63:5 66:17 70:11 76:22 77:1 82:15,19 83:1 84:18,19 85:8,8 86:12 98:18,24
based 32:20 36:15 41:6 58:4 67:2
basically 91:4 98:21
basis 33:13 56:19 80:8 82:7 94:9
bear 67:5
began 61:17 92:3,11
beginning 15:12 33:11 60:12
behalf 3:9,10 26:5 27:8,10 28:1 35:16 38:1 42:1 44:8 46:14 49:24 50:11 54:5,9 54:11 55:12 60:21 62:1 65:8 71:11,12 71:21 72:1 81:3 83:11 87:4 97:13 98:10 100:6
behlmann 10:19
belabor 75:1
believe 24:25 27:12 31:12 42:19 43:9,25 44:6,12 45:20 46:1,5 52:20 53:1 54:17 60:18,25 64:24

65:12 66:18 67:1 68:5 69:13 70:2 71:19,23 73:3 74:16 81:10,20 82:5 83:2,6 87:4 88:4 89:13,23 90:17 92:20
believed 51:22 73:14 78:5
believes 75:19
bellwether 55:7 59:9,10 61:2,17 81:24 82:4 83:7
belong 47:16
bench 37:17
beneficial 100:5
benefit 44:16 75:20 89:5
benefits 48:22 51:12,14,19 89:21 90:2
bernstein 12:20 63:21
best 21:5 22:13 22:19 43:11 47:12 49:6 50:1 53:2,21 65:10 74:1
better 32:20 33:14 77:16 80:24
bid 19:21 22:5 22:13 23:21 25:2,6,7
bidder 23:4,11 23:22
bidders 21:5,9 23:9
bidding 21:1 22:6
bids 19:24 20:1 20:2,3,7,8,13 20:16 21:3,6 21:11,14,15,16 21:19,25 22:20 24:5,7 95:8
billing 25:20
billion 65:24
billions 58:20
bit 17:21 19:8 33:7 51:7 56:24,25 93:12 96:6
bitcoin 18:25 19:5,11,13
bleeding 45:22 48:10
block 40:3
blockchain 5:12
blue 24:6
bob 7:25
body 76:16
borrowers 8:16
bottom 18:1 34:4
bound 23:19 61:5
bowling 1:13
box 50:21 64:8
breakdown 45:3
breakup 22:22
brian 9:21
brief 68:11 71:6 81:6 83:23
briefing 52:4
briefly 39:4 48:18 49:3 67:6 68:9
bring 40:11 54:11,23 56:1 62:1 65:8 66:10 71:11,18 74:5 92:7
brings 73:3 87:5
broad 12:17 78:19
broadcast 59:12 60:2
broadcasts 59:5
brought 54:20 55:14
bunch 21:12
burden 61:14 74:2
burdensome 100:2
bureau 12:16
business 17:11 43:11 53:1 56:5,11 60:10 60:11 62:2 96:17
buy 58:11
bye 41:18

c

c 7:1 14:1 96:15 102:1,1
ca 8:4 12:4
call 21:12 24:25
called 31:20 59:13 97:8
calls 24:6 60:15
camera 50:19 50:20
canceled 38:17
capacity 70:3,9
capital 63:11
career 32:19
careful 55:24
carefully 40:14 55:15
carpenter 12:15
carries 47:1
case 1:3 4:18 11:16 12:1,8 18:17 19:1,7 22:11 30:13,15 30:20,20 32:12 33:8,10,12,16 33:18,25 34:2 34:7,9,13 35:10,16,18 48:2,5,17 54:5 63:21 64:14

71:2 78:13 82:23 84:12 92:3 98:10
cases 53:16 55:1 60:12 64:6 71:10 72:16 78:12 80:7 84:11
cash 17:13,16 18:17
cashflows 19:14
casual 27:21
cause 51:13
causes 42:24
cdp 8:2
cede 28:8 50:7 54:1 86:24
cell 57:15
celsius 1:7 2:21 2:21 3:2,3 13:8 16:4,8,12 35:13,16 51:10 51:25 56:4,10 57:17,22,24 58:3,6,20,22 59:3,16,20,22 60:1,3,6,10,11 62:2 69:19 70:6,7 93:9 95:2,17 96:16
censorship 60:4
center 9:11
centerview 4:7
ceo 14:11,22 15:1 69:19,21
cert 97:20
certain 80:7
certainly 22:22 23:1 24:8 25:6 30:13,18,19,22 33:25 35:6,15 41:14 46:3 82:12,20 84:2 85:13 86:2,16 88:8,18 94:7 99:15,16
certainties 52:22
certificate 62:14
certification 61:13 66:10,19 66:23 67:4 74:21,22,25 77:19,20 80:15 84:1 85:9 98:19 99:11,14 99:17
certified 62:6 70:16 72:7,16 80:12 83:21 84:15 86:19 98:24 102:3
certify 61:23
cetera 96:17
chance 30:2 98:14
change 16:13 22:5 23:16 24:1 38:8 39:1 45:2
changes 23:5
chaotic 33:11 33:12
characterizat... 38:5
charged 63:14
chicago 7:6 12:11 13:4
chief 60:3,3
choose 99:13
chris 7:10 13:8 14:23 15:1 81:4 93:15
christopher 8:9 14:14,23 50:16
cir 85:21
circle 63:20
circuit 49:8 53:17 85:18
circumstance 79:17
circumstances 35:17 49:13 55:16 84:24 95:4
cited 63:20
city 17:20
claim 2:20 3:2 3:8,10 35:10 35:15 43:3,5,6 43:7 46:1 47:14 51:24 52:16,25 54:9 54:11,16 55:11 56:1,13,14,19 56:20,22 60:22 61:17 62:13 63:2,5,24 65:8 65:11,24 66:9 66:17 69:3 70:12,16 71:12 71:21,24 72:12 72:14 77:2,10 81:19,19 82:16 83:1,20 84:8 84:21,23 85:6 85:17 97:14,20 98:3,24 99:12 101:8
claimants 44:10 59:9,10 61:5 86:3,11
claims 3:9 42:24 43:1 45:21 46:4,19 51:16,25 52:23 54:13,21 55:5 55:8,17 56:12 56:24 61:15,16 61:18 62:1,9 63:4 64:2,8,9 67:11 69:10,11 69:13 70:19,21 70:25 71:25 72:25 73:15,16 73:18 74:6,8 74:12,14,16 81:23 82:1,4,7 82:8,16,18 83:8 84:14,25 85:1,3,4,4,5,25 86:2,12 96:14

clarify 57:7
class 3:8,10 10:15 47:1 54:9,11 55:11 56:1 60:22 61:12,23 62:6 62:13,25 66:9 66:10,19,22 67:4 69:2 70:15,16,17 71:3,4,11,17 71:18 72:8,11 73:5 74:21,22 74:25 75:21 77:19,20,21,22 78:24 80:11,12 80:15 81:19 83:20,21 84:1 84:1,8,15,18 85:5,9,17,23 86:8,18 96:14 97:14,20 98:19 98:24 99:10,10 99:11,14,17 101:8
classes 47:7 72:16
classified 47:8
classifying 92:6
clear 21:17 23:17 37:16 39:19 53:18 62:19 65:22 69:14 72:22 77:5 78:24 79:2,22,23 85:2 89:6
clearly 77:13
clerk 14:17 24:18
client 98:2
clients 66:25 67:1
clock 41:15
close 55:9 80:5 89:15
cnbc 59:7
cnl 57:1 58:5,7 58:15 59:2 65:1 69:14,18 69:22 73:9,16 73:23
cnl's 56:8 57:13 59:14
code 56:15 88:10
cohen 13:6 26:9
coin 17:21
coins 43:22 44:1
collateralized 58:22 59:5
colleague 14:13 25:15 27:12 50:8
collective 54:25 65:2,10 65:16 86:8 99:25 100:6
colloquy 75:12
colodny 12:6 54:4,5,7,8 57:8 57:11,12 66:16 67:13 75:10 76:14 83:3,7 83:16 86:20,22 88:21,25 89:1 98:5,7,9,9
colodny's 70:13 75:22
come 24:5 32:8 38:9 44:10 65:13 67:9 74:21 80:18
comes 18:7 30:19
comfort 32:14 97:22
comfortable 30:6
coming 20:3 21:23 27:14 43:23 44:4 55:24 71:1 96:5,9
comment 32:11 35:3 55:13 81:14 88:7
comments 24:4 27:3,18 29:19 32:20 33:24 36:15,15 52:18 55:4 56:23 65:19
committee 2:10,25 3:7 4:20 5:4,13,20 11:17 12:2,9 20:2,11,17 21:4 23:10 26:22 27:24 28:1 34:22 38:2 42:8 45:18 48:18 49:17,23,24 52:19 54:1,6 60:21 63:12,15 63:19,22,24 64:3,12 65:23 66:9 67:8 68:11 69:2,13 70:13 71:5,8 71:10,11,17 72:1,22 73:13 74:9,10,11 75:19,20 76:9 77:9,15,21,24 78:3,13 79:5,6 79:7,11,19 80:9,11,13,17 81:18,21 82:4 82:8 83:4,5,10 83:19 86:1 87:10 88:22 89:8,23 90:8 98:10 99:25 100:4 101:8
committee's 34:15 55:2 61:9 71:1 75:16 86:7 97:25
committees 71:20

common 61:25 82:8 83:10 85:4
communicati... 35:1
communicati... 69:25
company 51:16 56:6 58:11 93:11
company's 16:24 18:15
compare 21:11 44:23
compared 27:21 83:7
compares 44:19
compel 65:4
compelling 76:15
compensation 3:15,23 4:6,12 4:18 5:3,11,19 29:2,21 30:1,3 30:7
compete 21:20 95:9
competing 20:13 95:8
competition 20:6
complaint 56:20 62:23 72:15 74:23
complete 34:8 92:21
completed 15:14 92:12
completely 76:17,17 81:15 86:5 89:15
complex 72:20
complexity 48:5 61:13,14
compliance 23:2 24:9
complicated 49:16 100:2
concede 73:10
conceded 71:2
conceivably 23:5
concern 65:14 72:21
concerned 36:1
concerns 26:24
conciliator 52:17
concluded 37:21 49:15 100:15
conclusion 35:24
concretely 35:14
condition 51:14
conducive 61:4
conducted 61:9
conference 6:9 6:16,20 86:25 88:1,25
conferences 59:4
confident 31:9
confidential 20:8,9
confidentiality 20:19
confirmation 55:19 61:11 66:23 73:5
confirmed 30:17 61:2
confirming 62:18
conflict 63:19 64:4
conflicts 79:2
confusing 47:6
connection 26:17 35:9 43:6 46:25 47:3 88:3
connor 6:20 88:10
consensual 28:15,19 38:4 42:10 43:13 45:19 46:6 49:25
consensually 32:11 90:13
consent 89:8
consequences 64:13
consequently 53:22
consider 84:13 85:21 91:2 95:5
consideration 36:9 55:25 94:19,25
considerations 85:15,22
considered 46:16 49:13 53:14 55:16 62:11 85:14
considering 20:1 74:19,20 85:16
consistent 29:1 64:21 72:6 75:16
constantly 59:3
constituencies 63:13
constituency 70:20 78:14,24
constituents 55:21 75:20 76:11 77:16,22 79:8 100:5
constructive 26:22 46:1
consulting 6:2 6:5
consuming 48:24 100:2
contact 29:20 93:1,18 94:15
contemplates 52:14

contemplating 21:4
contest 54:19
contested 84:2 84:5 90:14
context 36:13
continue 15:21 20:11 28:17 29:24 30:23 44:9 93:20,22
continued 90:7
continues 30:13
continuing 40:5 87:9
contract 3:8 55:17 61:15 85:3
contractual 48:2
contractually 73:18
contrary 78:13
contribution 6:23
controversial 91:13
conversations 20:11 26:22 62:20
convince 56:10
cooperate 87:23
cooperation 32:6 33:20 88:16 89:4
cooperative 32:25
cooperatively 89:9,11 100:4
copy 14:10 29:19
core 17:7 18:3 18:9
cornell 11:6 27:12,13
cornell's 55:14 56:23
corp 63:20
correct 30:10 43:21,25 44:4 44:24 50:25 61:18 78:5 92:10
corresponding 93:17
cost 44:15 46:4 48:6,7,22 52:21,22 77:12 77:13,14 100:9
costly 99:7
costs 17:15 44:9 45:22
counsel 3:22 4:2,20 5:4,20 23:10,10 27:17 27:21 29:18,20 32:6,8,16 34:6 34:14,15 35:11 35:12 37:6 39:17 40:2,4 41:8,12,14 43:19 52:18 57:2 63:22 67:21 77:20,21 77:22 78:3 79:21 80:9,12 80:17 85:24 87:9 88:4,8 91:9 97:25 98:14 99:3,8
counsel's 38:12
counselor 28:9
count 15:10
country 99:7 102:21
couple 19:9 20:22 33:24 43:18,21 57:19 59:10 68:25
course 22:4 34:5 78:18 81:18
court 1:1,12 14:2,8,12,16 14:18 15:3,6 16:3,24 18:14 18:24 19:15,20 20:22 22:21 24:11,15,22 25:10,13 26:2 27:7,23 28:3 28:11,13 29:11 30:9 31:6,11 31:15,18 32:1 32:13 33:23 36:24 37:2,11 37:16,21 38:9 38:14,20,23 39:4,11 40:6 40:11,22 41:20 41:24 43:18 44:7,17 45:14 46:7 47:17,20 47:22 48:11,14 48:16,19 49:1 49:5 50:9,18 50:21 51:3,3 51:22 52:3 53:5,12,22 54:3,7,16 56:21 57:4,8 57:10 60:21,23 61:7,25 64:18 65:6,15 66:3,6 66:9 67:5,14 67:18 68:13,22 69:7,21,24 70:10 73:12,24 74:17 75:7,14 75:24 76:1,3 76:20,22,25 77:5,23 78:8 78:11,17 79:10 79:16,19,24 80:2,14,21,23 80:25 81:12 83:13,16 84:3 84:5 85:18 86:19 87:2,16 88:7 90:3,11 90:14,20 91:8 91:20,25 92:2 92:5 93:4,13 93:23 94:3,8 94:16,21,24 95:18,23 96:10

96:19 97:4,7 97:11,24 98:7 98:20 99:1,4,9 99:19 100:10 100:13
court's 16:11 28:16 88:19 98:18
courts 84:8,13
cover 90:16
covered 17:25
cramdown 95:14
created 47:5
creating 47:11
creditor 13:9 13:10,11,12,13 13:14 46:5 47:25 62:21 63:12 64:4,15 64:16 70:7 79:3 80:9 82:14 90:24 92:2,9 95:19 96:24
creditor's 63:12,24 71:10 71:11 77:9
creditors 2:25 3:7 4:21 5:5,13 5:21 11:17 12:2,9 22:8 43:24 44:2,2 44:18,20 45:5 48:6,7 54:6,22 60:13 63:4,15 63:19,23 64:1 64:2,6,25,25 65:5 70:12 71:12,20,21 75:17 76:9,16 77:2,15,21 78:2 79:3,5,7 79:13 80:11,13 80:17 82:20,24 83:9,11 85:17 86:6,13,15 91:3 92:4 93:9 95:3,12,14 96:4 98:11
criteria 25:4
critical 69:14 75:11
cross 51:2
crypto 26:16 59:20 61:20
crystal 77:5
current 15:6 18:15 23:4 42:16 87:23
currently 16:5 29:10,11
curtailment 17:19
custodial 9:17
custody 15:7,9 15:14 16:2,2,4 16:5,10,13,15 16:17 42:22 43:17 44:20,20 45:5,6 46:22 92:8,11,15 93:1
customer 73:15,16,18 85:25 86:1 92:21,23
customers 15:18,19,22 44:8 57:24,25 58:8,13,21 60:11 62:8 71:23 72:2 73:11,13 97:19
cut 24:11 75:8 94:10

d

d 6:21 14:1 88:11 101:1
damages 73:7
daniel 13:14 96:16
date 18:19 28:22 43:4 51:9,20 55:21 55:23 62:12,15 63:3,6 66:17 70:11 76:22 77:1 82:15,19 83:1 84:18,19 85:8 86:12 87:19 95:21 98:18,24 102:25
dates 52:8
david 8:20 11:21
day 7:24 8:1 42:18 47:4 55:24 57:14
days 20:4 21:10,23 62:20 67:24 68:25 71:3 72:19 83:1 96:5,9
dc 7:15 9:4,4
dd'ing 41:4
de 13:12 39:14
deadline 19:22 21:5 22:2,3,17 22:24 53:10 55:23
deal 17:6 26:3 40:17 48:4 68:10 71:25 81:23 82:7,8 86:19 90:14 98:2
dealing 33:15 37:8 74:7
deals 17:8
dealt 36:20 69:11,11,18 74:7 83:25 89:17 99:13
deanna 14:19
deb 45:16
deborah 9:14
debtor 1:9 7:4 7:13,20 13:2 15:2 21:4 34:22 35:12,12 40:2 49:18,23 51:9 67:11 73:13 78:4 81:3,5 89:7 92:12 96:23

debtor's 3:17 14:22 19:22 26:6 29:4 43:11 53:21 55:7 87:7,21 88:14 91:9 93:6,19
debtors 2:1,10 2:15,22 3:22 3:22 6:10,11 19:24 20:1,10 20:17 23:10 26:5,14,16,18 26:19 29:18 34:14 42:2 43:2 45:18 46:15 47:14 50:12,14 51:11 51:15,18 52:2 52:10,20,25 54:15,18 55:17 60:19 61:16,17 61:18 62:16 64:19 67:1,17 69:12 73:7,9 73:20,21 78:3 82:17 83:5 87:4,22 89:1 89:23 90:18 91:16 92:8,20 93:15 98:15
december 19:11 45:25
deceptive 54:14 62:2
decide 82:15
decided 22:15
deciding 20:3 88:24
decision 22:1 45:10 49:8,10 56:2 65:25 72:24
declaration 26:11,12,14 27:1,18 50:16 50:23 51:4 53:11
declined 17:18
defend 73:22
defendant 73:21
defending 52:23 73:21
definitely 36:13 80:6
defrauded 62:9 71:24
delay 20:25 65:14 66:21
deliver 22:13
demonstrate 56:4 57:20
demonstrates 56:18
denial 99:17
denied 55:20 97:20 99:11,15
dennis 9:7
deny 73:1
denying 86:10
department 10:1 11:1
deployed 17:2 18:1,3,5,6
deposit 59:20
depositors 95:2 95:7
deposits 95:12
described 53:15 71:5
design 87:11
designate 93:24
despite 67:7
detailed 89:22
details 17:24 20:13
determination 47:15 60:24 89:22,24
determine 46:17 49:5 89:3
determined 55:25
determining 84:13
detriment 43:24 64:16 86:12
deutsch 12:15
deviate 31:1
devised 73:1 83:8
differences 43:16 90:8
different 16:17 19:24 20:16 21:16 22:5,20 23:4 46:17 50:22 71:5
difficulties 76:15
difficulty 55:8
diligence 24:6
direct 84:6
directly 21:20 94:11
director 26:10
directors 73:10
disability 52:1
disagree 38:6 61:24
disclose 20:12
disclosure 20:25 22:2 23:23 26:18 45:1 47:4 66:2 89:8
discontinued 92:23
discovery 61:4 67:3
discretion 84:3 84:12
discriminated 52:1
discuss 98:14
discussed 17:24 74:24 95:25
discussing 89:6 97:18
discussion 23:18 30:4 85:12

discussions 23:12,19 28:18 30:23 32:25 37:7 40:5,7 87:9 88:22 90:7
dispute 47:14 92:10
disputed 55:18
disputes 60:19 66:24
dissatisfied 72:24
distinction 70:4
distributable 15:16 16:9
distribution 16:12 86:15
district 1:2 53:16
divergent 63:13
doc 2:11,16,23 3:4,11,17 4:2,8 4:14,22 5:6,14 5:22 6:6,12,24
docket 2:5 14:10 16:13 20:24 22:18 26:8,12,25 27:1,5 32:4 39:24 40:3,4 42:4,10,13,19 51:5 53:8 87:6 88:9,12,15 91:18
documented 58:18
documenting 42:12
doing 32:16 60:17 72:23
dollar 65:24
dollars 58:21
doubt 86:18
draw 70:4
drive 10:16 12:10 13:3
driven 17:14
due 17:18
dunne 9:7
duties 63:10 64:21 65:3 71:20
duty 63:14 75:16 76:10 78:4 79:8
dynamics 80:6

e

e 1:21,21 7:1,1 8:10 14:1,1 101:1 102:1
earlier 75:8
early 17:2,6,7 18:4 32:19
earn 10:8 43:6 43:24 44:2,20 44:25 45:4,5 46:2 70:11 77:25 79:12,16 92:15 99:23 100:3,7
earned 43:5 44:8
easier 44:23
ebitda 17:9,11 19:9,11
ecf 6:23 32:3 50:24 51:4 53:8,11 88:12
economic 17:19
ecro 1:25
edited 60:7
editing 60:1
effect 85:19
effective 2:4 52:21 100:8
effectively 17:11 19:12 92:5
efficiency 65:15 73:4 74:5 76:18 81:22 82:12 83:7
efficient 55:2 61:4 82:6,13 83:2,12 100:9
effort 35:9 79:9
efforts 38:11 38:12 49:23
either 23:3 28:2 30:14 41:6 46:8 64:9 88:3 89:17 90:12 93:23 94:11 99:12
elect 16:6
election 16:19 46:9,15,23 47:4
element 62:4
elements 74:19
elementus 5:10
eligible 15:12 15:22 16:5,9 16:17,21 96:4
eliminated 30:14
elizabeth 7:24 26:4 42:1 46:14
ellis 3:16,16 7:3,12,19 26:5 42:1 46:14 50:11 81:5 87:4
email 60:2 92:20
emailed 94:14
emails 15:21 15:24 60:14 82:21 92:24 93:5,7,8,21,25
embodied 52:12
embodies 98:17
employ 26:7
employee 6:11 50:14 87:7,20 88:4
employees 51:12,15 87:23

89:3
employer 51:9
employment 2:3 51:25 52:17
empower 95:11
encouraged 34:14 49:5
encouraging 74:12
ended 17:1
energy 17:15
engage 87:9
england 51:11
english 8:15 72:4
enron 71:9
ensure 65:4
enter 43:12 53:22,23 68:24
entered 41:12 47:2 49:22 86:21 99:14
entire 56:8 78:24
entirely 50:2 64:21 76:16
entities 73:14 96:18
entitled 51:22 88:18
entity 69:10 85:1
entry 2:2,9,14 2:19,25 6:10 27:5 29:25 43:2,15 52:19
envisioned 97:19
equally 25:7
equitable 44:6 46:18 49:6 53:2 65:4 85:15,19,21 86:15
equitably 64:1
equity 54:18 54:24 61:12,22 62:7 63:8 73:1 73:22
ernst 39:23
essence 62:22
establish 56:21 70:3
establishing 2:19 3:1 84:17
estate 25:21 44:8 45:11 46:3 49:7 53:3 53:19,21 61:5 65:12 73:9 77:12,13 78:1 78:6 79:12,17 85:10 89:5,21 90:2
estates 61:16
estimate 3:1
estimated 44:18
estimating 67:11
estimation 2:20 55:19 68:11
et 96:17
etcetera 23:9 77:12
evaluate 25:5
evaluated 79:20
evaluating 20:3
event 51:12
everybody 14:3 22:11,14 25:1 47:9 79:18
evidence 50:15 51:4,6 56:16 56:21 58:3 64:22
evidentiary 52:8
exact 41:11 88:15
exactly 21:15 61:16 79:17 94:5
examine 51:2
examiner 6:3 8:9 28:9,15,25 29:3,15,20 32:7,9,15 37:6 38:3,8 40:4 41:7 58:2 64:18,20
examiner's 29:7,9 32:3 54:17 56:3,15 58:18 60:8 62:22
examiners 32:12 39:1
example 41:2 66:13
excellent 33:1
exchange 43:1 52:15 92:20
exchanging 93:5,7,8,21
exclusive 49:7 57:20
excuse 18:3 57:2 76:22 99:20
excused 41:16
execute 51:15
executed 17:3 25:7
executing 42:13
executives 96:15,16
exercise 53:1 84:11
exhibit 39:23 52:12 53:9
exist 54:19 64:25
existence 64:24 69:20
expect 17:5 18:5,6 21:22 22:17 82:25 84:19 96:5,9
expected 15:18 52:22

expecting 23:18
expeditious 22:10
expense 22:23
expenses 3:24 4:19 5:4,12,20 6:22 44:9 89:4 89:7
expensive 49:17 53:19
experience 34:1 55:6 95:17
experienced 56:18
expert 32:15
explain 43:15
explained 26:13 27:1 42:15
explaining 20:25
explicit 97:21
explicitly 63:21 65:19
explore 35:13
express 48:20
expressed 39:1
extend 99:24
extended 22:1 98:25
extent 23:3 31:24 36:8 49:14 51:2 65:6
extraordinarily 90:25
extremely 32:25 34:7 89:22 91:7

f

f 1:21 12:13 102:1
f.3d 49:9 85:21
face 65:2
facility 17:20
fact 31:2 32:14 34:3,11 37:19 49:4 58:23 59:21 60:6,19 64:25 65:3 67:7 71:23 77:18 84:12 89:22 92:11 94:20 95:1
factor 62:5,11 62:12 85:7,7
factors 46:17 49:8,12,14 53:14,16 84:13 85:10,11,13
facts 55:11,16 56:2,4 64:19 64:23 84:16 94:9
factual 56:19
failed 56:5
fair 44:1,6 46:18 47:25 49:6,15 53:2 53:20 55:1,6 61:7 80:4 83:3 86:14
fairly 31:9 78:1 89:14
fan 32:12
faqs 74:13
far 16:20 35:25 61:14 65:12 68:4 82:13 83:2,11
fashion 54:22
fate 95:15
favor 62:13 85:16
favorable 19:13
favored 49:4
fear 95:14
february 2:4 15:8 17:2,10 17:14 28:24
federal 22:25 23:13 24:24
fee 3:21 4:18 5:2,10,18 6:2 8:9 25:18,21 25:22,22,25 26:1 28:9,15 28:16,21,23,25 29:2,5,6,9,12 29:13,15,19 31:13,14,22 32:5,6,9,12,13 32:15 33:13 35:21 36:9,14 36:18 37:6,23 38:3,6,7 39:1,9 39:17,24 41:7 41:15
feel 27:20
fees 6:22 16:17 29:16,19,25 35:5,9,18,23 35:23,25 36:7 37:1,14,15,19 40:19,23 87:21 87:22 88:12,14 88:16 89:21
feld 3:21 4:1
fell 95:2
ferraro 13:8 14:11,20,23 15:1,1,3,4,5,8 16:23 17:1 18:12,14,16,24 19:6 50:16,24 51:1,4
ferraro's 53:11
fiduciaries 66:11
fiduciary 3:10 54:11 60:22 63:10,14 64:21 65:3,8 71:19 75:16 76:10 78:3 79:8
fight 55:1,6 61:8 83:3
figure 24:17
file 3:8 22:2,17 29:10 31:25 33:10 35:9 54:9 55:11 56:13,14 60:22 62:22 63:2,4

66:9,17,20 69:2 70:16,19 71:20 72:1,17 74:12,14 77:2 77:9,18 78:23 81:6 82:16,22 82:25 83:5,20 84:20 91:2,18 97:19 99:12 101:8
filed 14:10 16:12 19:2 20:24,24 26:8 26:12,21 27:1 27:5,17 28:4 28:25 34:24 35:16 36:5 39:13,14,24 42:4,10,18 43:20 49:11 51:20,20,24 53:7,11 55:14 64:8 68:10 70:12,21,25 71:24 72:13 74:8,23 76:6,8 79:1 80:3 81:18,20,24,24 82:16,18 85:17 86:6 87:6 96:5 96:8,21 97:6 97:14 98:2,3
filing 20:25 26:24 29:18 63:10 75:21 82:22 91:15 96:4
filings 34:16
final 21:5 22:16,17 37:15 37:19,20,23 39:8
finalize 22:7
finally 65:18
finals 31:24
financial 6:3 10:1 13:9 18:15 58:23
find 57:12 82:10 89:25
fine 14:16 33:16 37:2,16 90:13 93:25 98:20
finish 40:1
finished 15:13 40:7
first 3:14,20 4:5,11,17 5:1 5:10,17 6:1 15:19 25:3,11 26:3 28:21 31:13 32:2 39:23 44:3,4 45:17 57:21 58:2 66:19 99:24
firsthand 65:3
fixing 58:11
fled 58:11
floor 8:3 10:2,9 11:11 13:3
flow 17:13 33:1
flower 8:3 12:3
focus 59:11 84:22
focused 21:13 22:12 25:8
focuses 75:17
follow 14:4 38:7
following 18:3
forcefully 77:24,25
foregoing 102:3
foremost 25:4
forensics 5:12
forever 20:14
forgoes 49:16
form 16:19 27:19 34:23 65:21 98:1
formal 52:6 78:24
format 49:21 86:20
formed 51:10
former 50:14 87:23
forms 89:12
formulating 2:22
forth 49:8 94:1
forward 6:16 21:6 22:5 23:21,22 25:2 31:16 32:24 33:21 42:3 43:5 52:21 57:16 63:1 66:13,18 80:8 89:19 91:5,7 94:8 97:23 99:25 100:3
found 44:7 58:2 59:13 62:7 63:11 92:19
four 15:20 20:1 72:19 92:12,13 92:16
fours 21:15
fourth 85:18
fraction 84:20
framework 89:2
frankly 81:21 82:10
fraud 54:14 61:15,19 62:10 69:10,13 73:11 74:12,14,16 84:17,23
free 25:25
friday 89:13
frishberg 13:14 39:4,6,7
frishberg's 35:4
front 14:3 32:3 42:9 93:14
fruits 74:15
frustrating 94:1
frustration 68:24

full 30:2 42:9 46:24 74:21 85:5 89:8
fully 23:1 35:20 46:6 52:25 57:15
functioning 64:12
fund 95:5,10 95:14
fundamental 79:7 86:14 90:8
fundamentally 56:4 58:13
funded 57:15
further 22:16 23:12 26:25 37:22 42:15 52:7 68:18 70:19 90:19
furtherance 2:22 21:25
future 87:19

g

g 14:1
gallagher 59:11,20,21,23 60:5
general 20:20 43:23 44:2,20 46:2,2 57:23
generally 63:15 84:13 91:8
generating 20:5
gentry 85:20
getting 18:20 44:21,22
giant 32:12
give 14:11 27:14 39:13 49:3 68:22 83:23 85:19 88:8 95:11 96:19,23
given 14:14 26:18 33:17 44:1,6,12,25 45:9 47:13 52:22 65:10 67:7 70:17,19 83:9 99:12
gives 54:25
giving 68:25
glad 49:25
glenn 1:22 94:19
global 52:3 60:23 71:1 84:10
go 14:24 23:10 24:15,22 25:2 25:13 26:2,3 28:13 31:6 32:24 37:11 39:5,20 42:2 46:12 48:16 49:11 50:22,22 51:6 54:7 56:24 57:10 65:10 69:1,6,7 80:8 81:15 85:12 87:2 88:25 91:25 94:24 96:2,15 99:20
goal 21:25
godfrey 8:8
goes 23:21 48:8 64:15 70:13 86:13
going 6:16 14:4 14:19 15:25 20:9 21:5,6,17 21:24 22:16 23:19 25:2,14 30:4 31:8,16 31:23 32:19,20 33:18,19,21 36:16,17,21 38:4 39:18 41:21 43:5 44:16 47:7 57:5 61:20 65:25 66:13 67:19 68:25 70:22 73:8,10 73:20,21 74:5 77:3,11,11,20 77:22 82:6,13 83:10,21,24 86:23 88:22 89:21 91:4,6 93:12 94:1 96:5,23 97:1 97:16,23 98:4 98:24 100:13
good 14:2,6 15:3,4 17:12 24:1 26:4 27:10 28:10,11 28:12 41:18,25 43:13 50:10 54:4 71:16 76:18 81:4 96:12 99:21,21
government 2:1,8,13,18,24 3:6,14,20 4:5 4:11,17 5:1,9 5:17 6:1,9
gracious 31:20
grant 80:15
granted 72:10 101:5,7,9
granting 2:5 2:11,15 3:3 6:11 83:19 85:16
grants 66:9 77:20
graph 18:1
great 14:9 15:5 18:22 19:17 25:19 32:14 86:13 91:20 94:16
greatest 52:22
green 1:13
gregory 12:13 28:1
gross 17:13 59:18
group 2:11 8:16 9:10,17 10:8 16:4 42:8

42:22,25 44:2 44:13 45:7,17 46:5,21 47:14 47:17 64:4,8 79:9 99:23
group's 42:18
groups 79:4
guess 40:6 97:24 99:20,22
guide 63:16
gump 3:21 4:1

h

h 91:24
hadley 9:1
half 45:7
hallmark 64:11
halls 55:22
hamilton 9:9
hamlin 7:17
hand 18:18
handful 37:18 37:21 70:21
handle 25:18 25:22 26:20 86:24
handled 88:17
hands 74:10 81:2,9
happen 70:22 72:6 77:3 78:11
happened 38:19 59:15 70:18
happens 52:21 71:15 78:15
happy 28:14 41:13 43:15 50:2 53:3 67:16 70:11,20 88:1 93:21
hard 42:11 46:16
hardin 17:4
harmful 47:6
hashing 17:5
haste 55:15 56:23 76:7 79:1
hauer 3:21 4:1
healthier 19:8
hear 14:7 24:12,13 30:18 54:6 68:14 69:5 78:10 81:1,2,13 83:18 88:2 91:24
heard 32:2,17 37:25 38:25 39:12 40:23 45:15 47:23 48:12 53:6 75:8 79:24 80:25 81:1,3 88:18 90:4 91:23 100:1,11 100:12
hearing 2:1,1,8 2:8,13,13,18 2:18,24 3:6,6 3:14,14,20,20 4:5,5,11,11,17 4:17 5:1,1,9,9 5:9,17,17 6:1,1 6:9,17,20,25 28:21 29:23 30:6,21 31:2,4 31:9 37:23 40:9,13,17 42:7 45:24 51:5 52:8,8 55:5 66:7 68:20 69:17 80:15 87:14,19 89:14 91:1,4 91:11
hearings 26:1 81:25 91:13 95:25
heart 56:11
heavy 48:24
hedge 95:5,10 95:14
held 6:17 16:10 39:18 42:25 51:16 85:18
helpful 43:17 57:6,6 76:6 90:25 91:3,7
heras 13:12 39:14
hermann 47:23 47:24 48:11
herrmann 13:11 47:25 90:22,23,23 91:10,14
hershey 11:22
higher 15:18 15:20 17:16
highlight 56:25
highly 85:22 86:7
hirschberg's 29:16
historically 51:11
hit 22:3
hitting 27:11 30:1
hoc 2:11 8:16 9:10,17 10:8 16:4 42:8,18 42:22,25 44:13 45:17 46:21 47:14,17 49:17 49:24 54:22 99:23
holcomb 91:22 91:22,24 92:1 92:2 93:4,8,18 93:24 94:2,4,8 94:13
hold 35:22 36:7 40:18
holdback 29:25 30:12,12 36:17
holder 79:3
holder's 2:19
holders 3:9,11 9:2,10,17 10:8 16:18 44:20,21 45:17 46:1,18 46:19 54:10,11

54:13,18,24,25 55:12 56:5,6,9 58:10,14,15 59:1,19 61:12 61:22 62:8,16 62:17,20 63:8 65:9,17,22 66:1,14 67:9 73:22 82:9,18 86:17 99:23 100:3
hon 1:22
honor 14:7,10 14:13,21 15:4 18:19 19:6,17 19:21,23 20:7 20:20 21:7,15 22:1,15 24:3 24:13,23 25:9 25:12,17 26:4 26:6,9,13,21 27:2,4,9,25 28:7,12 31:7 31:22 32:18 33:22 36:12 37:9 38:1 39:22 41:18,25 42:6,11,15,23 43:8,14 44:3 44:25 45:16,24 46:13,15 47:24 48:13 50:4,6 50:10,25 51:7 53:3,25 54:4,8 56:12 57:2,3 57:12 63:1,11 63:20 66:3,5 67:13,15,17 68:8,9 69:4,8 69:16,23 70:2 70:24 71:1,7 71:15,19,22 72:6,9 73:4,17 74:1,3,11,18 74:19,22,24 75:5,9 76:5 77:4,7,8,18,19 78:20 79:4 80:24 81:4,17 81:22 83:15 86:22,23 87:6 87:8,15,17,18 87:25 88:6 89:1,13,16 90:5,17,24 91:14,17 92:1 93:16 94:13 96:3 97:5,15 98:5,9 99:18 99:21
honor's 25:18 55:4 72:24 98:18
hope 89:25 95:15 100:7
hoped 20:5
hopeful 87:12
hopefully 23:23 28:18 33:21 82:22 90:12 100:4
hoping 22:3 97:21
horse 19:22,25 20:4 23:25
hosted 17:4
hosting 17:3,6 18:4
huron 6:2,5
hyde 102:3,8
hypothetical 66:8

i

ico 57:14
idea 33:14 92:4
identify 14:23 97:7,12 98:7,8
idly 63:20
ignat 11:10 97:6,14
ii 2:5,11,15 3:3 3:9 6:11
il 7:6 12:11 13:4
illiquid 26:16
imagine 36:22
immanuel 13:11 47:24 90:23
immediately 18:3
impact 18:8 19:13 23:5
important 20:8 20:16 23:3,7 23:20 25:6,7 34:8,17,21 35:2 59:25
importantly 20:7 61:24
impose 61:13 61:16 68:20
imposing 68:2 68:16
impressing 76:12
improve 21:24
inappropriate 81:15
incentive 6:11 87:7
include 63:25 84:25 87:19 98:16
included 72:14 87:11 98:5,12
includes 84:7
including 3:25 6:4 51:25 52:8 54:18 69:12 79:20 92:4
income 17:11
inconsistent 71:19
increase 18:2,5 18:18 19:3,4
increased 17:21 18:25
incredible 32:22
incurred 6:23 35:9
independent 54:10 56:18 64:18,20,23 65:7 66:11 77:17

indicate 39:19
indicated 52:4
indiscernible 14:17 15:21 16:19 17:18 18:22 37:1 50:17 65:18 79:10 81:11 93:2,3 97:4
individual 39:21 61:15 71:21 82:7,14 83:9 87:20 88:4 96:16 97:20
induce 59:19
indulgences 27:15
inefficient 75:2
inevitability 61:21
inflating 74:6
inform 19:23 55:20 56:5
informal 27:3
information 29:20 33:1
informed 55:4 55:6
initial 55:7
instance 63:23 75:5
instances 30:14 37:18 59:5 71:12
institutions 58:23,25
instruction 40:21
instructive 62:6
integrity 77:14
intend 62:1
intended 20:5
intensive 89:22
intent 75:12
intention 99:15
interactions 33:13
intercompany 2:20 3:2 67:11
interest 20:6 43:11 49:6 53:2,21 96:25
interested 21:2 22:10
interests 63:14 63:15
interim 3:15 3:21 4:6,12,18 5:2,10,18 6:2 15:1 28:16,21 28:23 29:2,13 29:21,25 30:3 30:7 36:14,19 37:14,19 39:8 39:24 40:24 41:10 50:16
international 3:16
interview 59:12
introduce 14:20 50:15,23
invariably 67:22
investigate 64:18
investigation 56:3 61:9 65:11
investigations 87:24
investigator 56:18
investing 58:22 95:5
investment 58:7 95:7
investments 8:2
involved 24:8 34:2 43:13 100:9
iridium 49:9 53:15
ish 19:12
issue 22:21 29:22 30:22 31:2 32:10 35:8,14 36:4,6 36:22 37:4,13 38:13,23 39:8 54:20 58:16 59:17 64:9 65:6 67:7,12 68:10 69:1 71:2,3 72:20 81:23 83:20 84:10 88:24 92:7 93:11,19 94:5 95:23
issues 23:6 25:22 32:8 33:2,7 34:17 35:6,15 37:18 37:20 41:1,5 44:10 55:9 64:13 68:12 73:5 74:3,25 83:25 88:19 90:20 91:5,6 98:4
it'll 19:19 31:2 33:21
item 17:25 25:16 26:6 42:3 87:5
items 87:17
ivene 13:10 95:18,19,19

j

j 8:20
james 13:13 98:22
january 17:7 18:4
jason 10:12 13:10 95:19
jeffrey 12:20
jenner 40:3
jennifer 10:5
jersey 12:16
job 73:24
joel 13:6 26:9
joined 14:22
joining 70:6

joint 2:8
jones 7:24 8:1 25:15 26:3,4,5 27:7 41:22,23 41:25 42:1 44:3,24 45:19 46:7,11,12,13 46:14 47:19,21 48:21
joshua 8:6
joyce 99:22
jude 63:21
judge 1:23 27:11,11 31:5 31:10,19 37:10 76:13 78:10 79:23 80:4 81:8 94:18,19 94:22 96:12
judgment 43:12 53:1
july 3:25 4:21 52:9
jumped 24:19
june 18:7 51:8
justice 11:1

k

k 9:3 63:20
kahn 8:8
katherine 8:13 28:8
keep 60:8
keip 87:13
kept 20:14
key 6:11 56:25 87:7
kirkland 3:16 3:16 7:3,12,19 26:5 35:5,11 36:7,19 37:7 42:1 46:14 50:11 81:5 87:4 94:12
kirkland's 35:23,25
knew 55:23
know 18:25 19:7,7,11 21:18,23 22:20 23:8,17,23,25 25:8 30:12,16 31:16 32:8,9 33:10,11,15 34:3 35:19 36:10 37:17 38:4,14 40:16 41:21 45:23 48:1,3,6 49:4 49:19,24,25 53:14 58:1 59:1,11,25 60:5 62:18 63:2 65:10 66:24 67:2,17 67:19 68:3 69:4 70:24 72:6,7 73:7,19 73:20 76:25 78:1 80:5,18 80:23 82:10,20 82:20,22 85:4 88:21 90:11 91:5 93:5 94:2 98:23 99:19
known 20:17 20:18 23:25 24:1 62:9 84:17
knows 33:5 81:22
koenig 7:10 14:14 81:3,4,5 81:10,15,17 83:14 86:23 91:17 93:13,15 93:15 94:7,11 95:24 96:3 98:16
kotliar 9:21
kovsky 9:14 45:14,16,16 46:12 49:24 50:6
kovsky's 48:21
ks 1:25
kuhns 99:20,21 99:22 100:10
kurman 10:7
kwasteniet 7:8 14:4,6,9,19,21 15:5 16:23 18:10,13,22 19:15,17,21 21:7 24:3,11 24:13,16,20,23 25:12,14 41:21 86:24 87:2,3,3 87:17 89:5,10 90:17
kyc 15:9,11,13 15:22 92:12,22

l

la 7:5
land 85:11
language 72:4 98:6,12,17
large 72:18 75:18
largely 76:16
las 13:12 39:14
late 33:3 35:10 36:5 39:25 58:17
latham 40:2
law 70:15 85:4 99:10,16
laws 51:10
lawsuit 98:3 99:13
lawyers 32:23 93:6,7 94:12
layer 20:18
lead 60:21 65:14 83:3
leah 7:17
learned 92:3
leave 23:24 24:2 38:20,23 66:9 71:13 83:19 90:15 97:1 98:4
leblanc 9:6 66:4,25 67:15 67:15 68:8,13 68:13 69:1,4,8 69:23 70:2,10

70:24 73:17,25 74:1,18 75:7 76:25 78:22 80:19 82:11 84:22
lectern 28:8 86:24
ledanski 102:3 102:8
left 18:1 57:13 71:22 73:22
legal 86:5 87:21,22 96:19 96:24 102:20
lehman 71:9
leon 96:17
level 36:23 96:15
levi 13:9
lexington 7:21
liability 71:2 73:6,23
liable 73:10,13 73:14,16,18
lied 60:18 95:1
lies 58:20
life 59:22
light 21:1 22:19 46:4 52:10 55:10 56:22 82:4
likely 47:4 73:5 83:3 86:10
limited 2:21 3:3 51:10,21 61:19
line 14:22 25:20,23 26:10 27:13 53:16 60:9 66:23 81:12 88:5 101:4
liquidation 19:4
list 42:18
listed 39:22
listening 19:23 22:8,9 25:1
litigants 34:11
litigate 86:18
litigated 53:19 64:8
litigating 44:9 52:25
litigation 3:22 42:17,21 43:9 44:15 45:9,22 46:4 49:17 55:10 61:6,7 66:22,25 73:4 96:21
little 18:20 19:3,8 29:23 33:6 61:2 93:12 96:6
live 23:10 59:25 60:2,6
lived 86:4
lives 95:4
llc 1:7 2:3,21 3:2 4:7,13 6:2 6:5 49:9 69:19 70:7
llp 3:16,16,22 4:1,18 7:3,12 7:19,24 8:1,15 9:1,9,16 10:14 11:16 12:1,8 97:13
loans 58:16,21 58:22 59:6,7 59:17
lock 95:10
log 92:19
logged 34:5
long 46:16 53:16 73:5
longer 17:23 24:8
look 36:13 37:2 38:14 76:12 79:24 90:11 91:15 96:19
looked 62:14
looking 34:4 60:2 66:21 99:25 100:3
los 8:4 12:4
losing 18:20
lost 27:13
lot 21:10 24:5,9 33:19 34:25 37:2 46:17 48:1,6,7 59:9 83:17
lots 78:12
loureiro 7:9 50:8,10,11,20 50:25 51:7 53:25
love 77:1
low 19:10
lowenstein 10:14,16
lp 5:2,18
lucas 92:1

m

m 7:8
m3 5:2
machines 17:4 17:18
made 21:3 32:11 34:16 36:1,8 38:6 41:2,6 44:22 55:13 58:6,16 59:19 65:11 69:17 70:7 71:14 74:22 76:14 81:14 85:2 89:5 97:21
madison 8:11 10:9
mailings 82:21
main 8:10 10:2
majority 59:24 63:17 75:18 86:13
make 21:17 23:17 33:16,24 35:3 47:9 50:1 55:22 65:22 77:5 89:24 90:10 95:7 97:17 100:8

makes 25:17 59:6
making 6:23 21:25 22:12 90:1
managing 26:9
manner 20:12 55:2 85:19
march 15:12 16:3 17:1,9,14 17:22 18:2,18 42:6,11 92:21 92:24
margin 17:13
margins 19:7
mark 45:8 55:18
marketing 57:1,18 95:2
marsal 4:13
martin 1:22
mashinsky 57:1,13,21 58:15,16,24 59:2,6,12,16 60:5 69:18 70:8 96:16,21
mashinsky's 57:1 59:24
masumoto 27:13
material 54:15
materially 22:5
materials 21:8
matter 1:5 45:25 60:20 82:2 93:3
matters 25:19 25:21,25 55:10 84:2,5
maximize 95:3 95:15
mccarter 8:15
mccloy 9:1
mcelroy 12:15
mean 25:6 37:20 63:18 68:4 78:15 88:17 90:13 91:2 93:25,25
means 44:9
meant 65:20 98:13
measure 73:3 82:12
measured 15:11
mechanism 72:25
media 74:14
meeting 24:23
meets 43:10
megawatts 17:3
member 63:14 71:17
members 42:25 43:2 46:21 49:17 70:17 71:4 79:6 84:18 85:23 93:17 99:11
mendelson 96:11,12 97:3
mention 37:12
mentioned 78:22 97:18 99:6
mere 64:25
merits 73:8 83:4
message 58:13 68:18
messaging 15:22 56:8
mester 8:6
metrics 17:24 87:11
mf 60:23 71:1 84:10
mg 1:3
mi 9:12
microphone 93:14
middle 45:4
migration 59:14 70:5,5
milbank 9:1
million 15:15 15:16 18:17,17 18:18 19:9,10 19:13 36:25 44:13 57:15
mind 35:7
mindful 25:2
minds 25:4
mine 78:2
mined 17:21
mineola 102:23
mining 16:25
minority 63:17 85:23
minute 19:19 38:17,19
misleading 62:2
mispronounc... 97:11
misrepresent... 54:14 61:19
misrepresent... 56:7 57:13,17
misrepresented 56:4 58:13
missed 31:14
missing 100:6
misstated 42:20
mitigating 18:8
mnas 59:24
model 60:10
modifying 98:1
moment 38:15 67:6
money 36:21
montana 17:5
month 17:22 18:18 19:9,10 19:14
monthly 29:12
months 38:11 38:12 43:8
montpelier 10:3

morning 14:2 14:6,12 15:3,4 21:13 26:4 27:10 28:10,11 28:12 31:21 35:4 41:25 50:10 81:4 87:1 99:21
motion 2:9,13 2:19,24 3:6 6:10,25 42:3 42:10,13,15,18 49:3 50:13 51:20,21 53:7 53:9 54:9,20 63:10 66:10,18 66:23 67:4 68:10 72:13 74:22 75:15 76:8 77:18 78:25 80:15 81:10,19 83:18 83:19 84:1 85:14,16 86:7 86:7,10 87:7,8 87:21 88:14,18 89:2,6 90:14 91:2,16 92:6 97:15,15 99:11 101:6,8
motions 84:6
mouth 70:1
movant 72:12
move 18:10 19:16,16 20:21 23:22 25:11 42:3 50:3 61:10 63:1 66:18 74:17 86:21 89:19 94:8 95:4
moved 67:17 93:13
moving 17:23
mulvaney 12:15
music 85:11
musicland 85:13
mute 24:18 66:5,6 81:12
muted 24:17 81:13 94:21
mutually 100:5

n

n 7:1,5 14:1 101:1 102:1
nagi 10:12
name 97:8
narrow 87:13 94:5
nature 26:18 50:2 52:3 63:11
necessarily 36:5 64:16 84:12
necessary 26:19 37:7 70:14
need 22:6 30:24 31:9 36:7,18 38:9 68:6 76:18 82:22 83:18 91:22 93:20 95:3
needed 48:3,4
needs 55:5 94:5
negotiated 38:4 41:3
negotiating 20:15 45:2
negotiation 20:10
negotiations 52:11
neither 68:2
network 1:7 2:21,21 3:2,3 13:8 17:16 51:10 70:6
never 32:12 41:4 61:23 64:5 69:17 72:2,3 75:2,3 78:22 92:18 95:5
new 1:2,14 7:22 8:18 9:19 10:10 11:4,12 11:19 12:16 17:3 18:4 23:15 29:24 30:10 59:4
newark 12:18
nickel 41:17
night 14:10 60:2 62:16
nine 17:10 29:10
nj 10:17 12:18
nolan 6:20 88:5,10,17 89:16
nolan's 88:8,20
non 3:8 49:7 53:15 55:17 61:15
normal 33:8
north 4:13
note 28:20 29:6 29:15 44:25 74:11 82:17
noted 42:6 63:22
notes 17:23
notice 22:18 40:15 82:15 83:1 84:18 85:8 91:18
notifications 15:24
noting 16:13
notion 72:1
novawulf's 95:10,14
novel 71:7 75:3
november 28:23
nuke 96:17
number 26:8 26:12,25 27:2 27:5 34:1 39:24 40:3,4 42:3,5,19

47:11 51:5 53:8 74:6 77:1 78:1 81:2 88:15 94:14 95:12
numbers 44:23
nw 7:14 9:3
ny 1:14 7:22 8:18 9:19 10:10 11:4,12 11:19 102:23

o

o 1:21 14:1 102:1
object 63:24
objection 27:17,22 28:2 34:20 35:4,5 36:5 39:5,13 39:14 51:5,21 51:23 55:8 83:8 86:17 98:13
objections 23:16 27:3 28:4 29:5,7,9 29:12,19 30:16 34:16 39:12 40:13,16 42:10 43:20 49:11 51:3 53:7,10 53:11 54:16 81:24 87:13
obtain 63:25
obviously 20:16 23:1 37:6 40:13 67:4 74:20 95:25 96:6 98:2 99:6 100:6
occurs 25:19
october 3:25 4:21 5:6,14,21 6:4,4 28:22
odette 2:15
offered 51:17 58:8
offering 46:20
offers 95:9
office 23:12 80:2 87:10
officer 60:3,4
official 2:24 3:7 4:20 5:4,12 5:20 11:17 12:2,9 54:5 98:10
offit 10:7
oftentimes 60:15
oh 48:14 50:7 50:21 70:10 77:10
okay 14:7,12 14:18,19 24:16 27:23 28:3,6 28:14 31:11,15 31:18 37:8,23 38:22 39:3,4 39:11 40:17,19 41:13,24 44:17 47:22 50:9,21 53:6 54:6 57:9 66:8 67:6 68:7 68:21 69:1,8 69:24 70:22 75:23 77:3,4 80:4 81:2,15 87:2 90:11,15 90:20 94:6,8 94:12 95:23 96:10 97:3 98:20 99:2,19
oklahoma 17:20
old 102:21
omissions 54:15 56:7
omnibus 42:6 87:14
once 38:16
ones 32:23 39:20
ongoing 87:24
online 18:7
open 14:12 47:14
opening 24:21 60:8
operated 60:12
operating 49:9 53:15
operations 16:25 17:13
opinion 60:23 83:24 85:1,25 86:2
opportunity 33:4 46:24 47:10 70:17,19 88:8 99:12
oppose 66:14
opposed 74:6 78:2
opposing 63:13 81:7
opt 16:14,18
opted 16:21
options 55:16
oral 98:18
order 2:2,9,14 2:19 3:1 6:10 16:7,11 25:22 26:25 27:5,19 29:2,3,21 30:1 30:3,5,7,11 31:13,14 36:19 41:11,12 42:2 43:3 49:21 52:13 53:9,22 53:23 55:10 68:24 86:20 89:12 91:9,18 97:18,22 98:1 98:6,12,17 99:14
ordering 23:7
orders 34:23 38:6
ordinary 95:4
organized 54:25
original 26:11 26:13 82:19
originally 16:10

outages 17:20
outcome 46:6 86:13
outlined 29:2
outset 34:14
outside 34:12
outweighed 61:14 77:14
overlapped 47:5
overruled 34:20 51:23
own 41:17 56:3 61:9 76:1,3 89:18

p

p 7:1,1 11:22 14:1
p.m. 16:20
page 56:17 58:4,18 101:4
pages 85:12
paid 52:14 89:7
paper 80:2
papers 42:16 74:11,24 75:11 83:6 86:6
paramount 65:14
park 8:17
part 16:2 18:9 21:22 30:11 34:3 56:9 57:18 72:7,18 72:20 78:25 84:6
participants 33:13 34:5
participate 16:6
particular 63:23 64:4 73:9 82:23
particularly 33:12 62:8 100:2
parties 19:23 19:25 20:15,16 20:18 21:2,24 24:7 32:11 33:6 40:5 42:17 43:9,13 44:16 47:13 61:6 63:25 74:12
partners 4:7 5:2,18
party 3:10 24:18 51:2 54:17 70:6 92:22
pass 66:4
passed 15:11 57:24
passes 59:18
passing 58:6
past 59:10 73:5
path 22:5 52:21 55:7
patience 67:19 67:22 93:11
patricia 7:9 50:8,11
pause 75:6 82:3 83:14 96:1
pay 43:2 51:19 87:22
paying 44:14
payment 6:22 51:21 52:14 88:11 89:21 90:2
payments 16:17 46:24
pedaled 58:7
peled 11:14 97:5,10,13,13
pending 42:17 42:20 43:8 85:14 98:19
penn 9:18
pennsylvania 7:14
people 21:12 35:11 48:7,9 57:22 59:19 69:13,17 70:5 74:14,15 78:8 78:14 84:20 97:22 99:6
pepper 9:9
percent 15:10 15:12,15 16:9 16:15,20,22 17:10,14,14,16 17:18,21 29:25 30:12 36:14,17 36:23 43:3,4 44:14,22 45:3 45:3,6,7 57:24 59:18 82:19
percentage 17:17
perella 5:18
perfectly 33:16 49:19
period 3:17,25 4:2,7,14,21 5:5 5:13,21 6:3,6 28:21,23 47:2 47:4
permission 25:18 28:16 55:25 56:14 91:17
permit 40:12 40:15 69:2 70:15 80:9
permits 63:1
permitted 56:20 95:8
person 77:17
personal 55:6
pervaded 56:8 57:1,17
pervasive 54:14
pesce 12:13 27:25 28:1 37:25 38:1
petition 18:19 19:2 28:22 43:4 51:8,20 62:7 72:16,17 84:15,16 95:21

phase 42:21 48:25
phone 50:19 60:15 94:14
phx 13:9
pick 41:21 60:15
picking 41:22
pie 64:15
piece 64:14
pillay 40:3
pinch 27:11 30:1
pitch 56:9 57:18
place 20:12 36:17 60:25 77:9
plaintiff 60:21 62:3
plaintiffs 10:15 61:3
plan 2:22 23:24 30:17 43:6 46:25 47:1,3 65:20 65:23,25 87:7 95:10,15
plans 47:7
platform 15:23 61:20
plaza 9:18
pleading 81:6
please 15:6 18:12,14 29:19 48:19 50:22 68:4 81:12 94:3 95:7,10
pleased 42:9 49:20
plenty 67:8 78:8
podium 14:5 25:15 27:20 50:8 54:1 66:4
point 17:25 19:11 23:8 36:19 37:23 38:24 39:18 45:23 57:16 58:3 59:6 62:25 63:7 65:9 69:17,18 69:19 70:13 75:1 76:7 93:7 97:17
pointed 58:6
points 34:20 38:2 41:1 97:16
poor 80:8
porter 94:17 94:18,21,22,25
portion 86:3
position 30:24 41:4 64:20 73:7,12,16,17 73:20 78:2,4,5 78:13,14,17 79:11,13,14,19 80:16 81:18 83:5
positions 20:17 63:23 64:5,7 64:12
possession 3:23
possibility 22:4
possible 22:1 63:17 95:16
post 70:5
posted 91:1,12
posting 55:22
potentially 43:24 44:22 47:6 64:13
pound 52:14
pounds 52:23 52:24
practical 30:15
practice 30:10 30:25 31:13
practices 54:14 62:3
pre 17:11 62:6 70:5 72:16,17 84:15,16
precedent 80:8
preference 67:20
preferred 2:19 9:2 54:18,23 61:12,22 62:7 63:8 65:25 66:14 73:1,22 86:17
premature 86:17
prepared 39:14 56:17 61:10 66:18
present 14:14 54:9 92:10
presentation 14:11,15
presented 32:10 52:16
presentment 40:12,16
prevailed 73:15
prevents 65:1
previous 16:11 17:22
previously 16:16 20:24 42:21 87:6
prices 19:11
primarily 60:24
primary 25:4
principle 42:7 79:7
prior 81:25 82:18 86:12 95:25
pro 13:9,10,11 13:12,13,14 33:13,15 34:1 34:6,11,15,16 35:1,3 47:25 54:22 61:3 62:21 76:16 77:2 78:1 79:21 82:23 86:6 90:23 92:2,3,9 95:19 98:23

probably 21:23
problem 24:20 31:17 57:9,9 58:11 65:2 76:19 97:10
problems 47:11
procedure 2:20 29:1 97:23
procedures 3:1 66:2 67:10 87:22 89:2,17 89:19,25 93:20
proceed 22:19 55:1 57:10 66:23 67:2 86:8
proceeded 52:7 56:23
proceeding 48:25 52:6 61:3 84:9
proceedings 14:12 92:3 100:15 102:4
process 15:7,9 15:13,23 19:22 20:4,10 21:1,6 21:11,22 22:6 46:9,15,23 48:24 50:2 55:5,8 60:4 61:2,8,17 65:10,11,16,20 71:9 72:9 73:4 74:6 75:2 76:19 77:10 79:5 80:10 81:20 82:1,4,6 82:9 83:2,8,25 84:14 86:8 92:10,14,17 96:4 100:1,8
processing 96:7
professional 3:15 4:6,7,12 4:13 6:5,22 88:12
professionals 25:20 28:18 33:20 34:25 40:18 65:13
profits 58:6,9
program 6:11 59:12 87:12
progress 90:9
progressing 34:9
projecting 45:5
promoting 59:3
proof 66:16 70:12 71:11 72:14 81:19 84:21 85:5
proofs 63:4,5 71:20,24 72:11 77:2 84:8 85:17
properly 54:23
property 44:8 45:11 46:2 47:16 77:25 78:6 79:12,16
proportion 75:18
propose 21:16 98:15
proposed 26:25 27:5,19 30:5 40:8 46:9 46:23 52:13 53:9,20 61:8 68:9 75:4 77:10 87:13 89:2 97:17 98:6,12,17
proposing 71:22 78:21 81:21
proprietary 17:15,19 18:7
prosecuting 61:14
prospect 74:5
prospective 21:9
protected 63:5
protracted 61:3
prove 61:23,25 62:3
provide 15:21 16:24 18:14 26:15 49:21 52:21 61:8 62:15 89:2
provided 26:10 26:17 51:11 56:17
provides 43:12
providing 65:16
proxy 17:12
public 59:4
pull 25:24
pure 16:2 92:8 92:11,15 93:1
purposes 29:6 30:15 55:19 85:20
pursuant 6:21 16:7 42:23 87:22 88:10
pursued 46:3 54:21,21,24
pursuing 55:7 96:25
pushed 82:3
put 33:17 62:21 65:19 74:2,13 91:10 95:16
putative 70:16 84:17 85:23 99:11
puts 45:4,7
putting 66:20

q

question 18:25 44:4,6,17 54:12 61:1 73:6 76:9,19 80:11 98:22
questions 14:25 20:22 26:23 27:3,4

43:14,18,21 53:4,5 66:4 75:6 88:2
queue 96:8
quick 17:10 19:19 38:2 40:17 90:24
quickly 58:7 61:10 96:14
quite 33:7
quote 71:6

r

r 1:21 7:1 14:1 102:1
rachman 13:9
raise 22:21 35:6 62:9 90:21
raised 34:17,21 35:8 37:20 41:1 62:13 64:9 81:2
raises 35:15 98:3
ran 28:22
range 52:23 85:5
rare 40:25
rate 17:16
rates 58:4,8
rather 30:3 56:13 74:7
reach 28:18 89:10,18 94:4
reached 28:15 42:7 50:13
read 49:25 75:10 80:2
reading 75:14 75:22 76:3
ready 20:20 49:1
real 59:13
really 21:20 23:2,9 33:24 35:8 37:5 48:18,23 49:22 60:9 75:11 76:21 77:8 88:19,24
reason 24:1 47:1 60:5 68:17 71:16 72:23 78:25
reasonable 43:11 44:1 45:12,20 48:1 49:15,19 53:21 64:20 67:21 81:21
reasons 49:3 74:23 83:23
recall 19:2
receive 16:14 29:15 47:10 82:15
received 19:24 22:20 27:2 35:4 84:18 96:1
receiving 21:8 51:14 82:21
recent 29:16 35:4 39:5
recently 20:24
recess 100:13
recharacteriz... 43:5
recitation 64:23
recognition 52:6
recognize 52:2
recommend 29:8
recommenda... 29:9 35:24 37:5
recommended 29:11
record 29:5 30:2,4 38:24 50:11 65:19 95:6 98:8 102:4
record's 39:19
recovery 44:18 44:19,22,25 45:4,6 65:4 73:2 95:3,16 96:25
redaction 91:5
reduced 30:14 31:3
reducing 36:18
reduction 38:4
refco 71:9
refer 85:11
referenced 38:8
referred 39:25 60:4
reflected 34:3
reflects 52:18
refresh 15:9
regard 53:17 76:15
regarding 38:6 38:8 96:14
regret 27:19
regularly 24:24
regulars 58:10
regulation 10:1
regulators 22:24 23:13,18 24:25 58:6
regulatory 23:2,6 24:9 25:3 60:3
reimbursement 3:24 4:19 5:3 5:11,19 22:23 87:20 88:6,16 89:4,16
reiterate 34:24
rejection 17:7 18:4
relate 29:10,12 29:13
related 2:5,11 2:16 3:3 6:12 26:16 29:19 42:24 87:18

relative 48:23
release 25:25 52:15
releasing 30:11 51:16
relevant 85:22
reliance 61:23 62:1 84:23,25
relied 70:3 72:4,5
relief 2:5,11,16 3:3 6:12 34:23 65:7,22 66:14 75:15 94:3
relying 70:8 75:21 76:1
remain 20:8 30:22 36:17
remaining 15:16 16:1,9 16:15 43:4
remarkably 63:8
remarks 24:21 83:14 88:2
remedy 65:1
remind 15:22
reminder 15:24 17:10 18:16
rendered 3:24 4:19 5:3,11,19
reorganization 2:23
repeatedly 57:21,23 58:15 58:24
repeating 58:12
reply 62:14 68:11 71:6
report 28:14 29:1,8 32:3 39:23 40:14 41:9 54:17 56:3,16,17 58:5,19 60:9 62:22 64:22
reported 29:23
reporting 29:7
represent 15:12 63:12 77:16 79:9 92:5 97:5
representative 86:11
represented 71:8 79:21 85:24
representing 16:21 80:9
represents 64:22
reputable 58:23
request 14:13 27:4 43:15 55:25 63:3 64:17 85:17 87:20 91:9 92:22
requested 55:17 65:7 87:8
requesting 56:13
require 62:3 66:11
required 16:19 37:22 51:15 52:4 56:14 63:4 67:3 84:23
requirement 84:25
requirements 43:10
rescap 63:20
research 18:9 85:25
reservations 39:1
reserve 30:21 31:24 37:14 38:5 39:9
reserved 23:1 30:8 36:1 37:18
reside 85:2
residential 63:10
resolution 22:10 28:15 40:8 43:13 45:19,21 47:12 82:1,9 92:24 93:3
resolutions 28:19
resolve 26:24 67:9,12 68:4 83:20 87:13 93:10
resolved 31:10 35:20 67:7 68:5 90:12 94:2,5
resolves 42:16
resource 48:24
resources 33:17 54:22 65:12
respect 16:1 27:16 29:9 30:8 31:22 35:5,21 37:14 40:14,23 42:18 42:21 43:16 44:3,5 46:2,9 66:22 67:3,10 74:4 85:3,14 97:17,23 99:17
respectfully 27:4 43:14
respond 26:23 65:18 72:19
responded 93:9
responding 92:24
response 75:24 97:6,14,24
responses 29:5
rest 19:18
result 22:6 34:19 46:18 49:25 51:18 86:10 100:5

results 47:6 52:11
retail 95:2
retain 26:15,19 99:7
retained 99:3
retention 2:3 25:16,17,23,24 26:7 27:16 28:5
return 16:5,8 60:20
returning 60:8
revenue 58:4
revenues 57:25 59:18
review 29:1 30:2 36:4 40:14 81:20 85:25
reviewed 28:1 28:4 29:4,4 32:14 36:2 39:8
reviewing 32:5
revised 16:12 22:23 26:24 27:5 31:13 89:12
rewards 58:3
rhythm 33:9
right 16:23 19:8,10,15 20:12,15 22:12 22:13 25:10,11 28:3 32:1 34:14 36:24 37:24 39:12 40:6,22,24 41:20 45:4,14 47:13,23 48:12 50:3 61:10 67:5,14 70:23 73:19 76:2,24 77:6 78:16 79:10 83:16 84:9 87:16 90:3,15 91:21 94:16 99:4,19 100:11,13
rights 14:14 23:1 30:7 31:24 39:9 65:17 82:21
rigs 17:2,4,5,8 18:1,5,6,9
rise 19:12 36:22
risius 2:3
risk 52:24 56:6 58:14 60:3
road 48:4 102:21
role 97:2
roll 27:21
rood 10:5
roseland 10:17
ross 2:3 7:8 15:8 87:3
round 15:24 23:15 36:13
rule 39:15 43:10 49:2 71:18 72:6,14 74:19 84:1,4,4 84:14 85:19 91:8 94:9
ruled 22:23 79:19 97:15
rules 84:6
ruling 30:21 54:16 55:21 85:2 98:18
rulings 101:3
run 70:11 73:5
running 41:14 67:20,22
runs 76:10
rushed 72:21

s

s 7:1 8:3 14:1 65:18
s.c. 8:8
safeguard 63:16
safer 57:22
sale 19:22
sales 56:9 57:18
salle 7:5
samuel 11:22
sanders 9:9
sandler 10:14
satisfactory 36:10
satisfied 38:24 41:9
satisfies 80:18
saturday 68:11
savings 48:22 56:10 59:22
saying 54:12 78:10,21 79:13 80:5
scale 61:24
scarce 72:11
scenario 46:20
schedule 16:12 52:7 55:17 66:22,25 67:10 67:12,21,25 68:2,5,10,16 68:16,21 74:4 96:4
scheduled 6:25
scheduling 55:10
scheme 58:7 95:2
schwartz 11:7 27:7,9,10,23 28:7 29:22 30:1,9 31:5,6,7 31:8,12,16,19 37:10,10,12,24 38:18 41:19 57:2,4,5,9 71:13 75:7,9 75:23,25 76:2 76:4,21,24 77:4,6,23 78:7 78:10,16,19 79:15,22 80:1 80:4,20,22,24 81:8,11 88:23 90:3,5,6
schwartz's 36:15

scientific 17:7 18:4
score 40:7
screen 14:15 14:18 34:4 97:9
se 13:9,10,11 13:12,13,14 33:13 34:11 47:25 54:22 61:3 62:21 76:16 77:2 78:2 79:21 82:23 86:6 90:23 92:2,4,9 95:19 98:23
second 17:6 25:15 28:23 29:13 33:5 44:5 49:8 59:8 62:5 66:19 79:11 85:7
section 87:1
secured 58:22
securities 10:15 12:16 23:13
see 14:5,7 18:1 34:4 37:24 38:25 50:22 67:9 71:8,23 74:15 81:8 83:5,22 85:20 90:9 93:13 94:4,10 95:8 95:20 97:8
seeing 29:17 50:21
seek 51:18 55:18 64:1 94:3
seeking 26:7 26:15 31:1 51:21 66:15 72:13
seeks 75:15
seem 61:22
seems 85:15
seen 15:18 37:4 72:2,9,10,12 95:21
segal 9:16,16
select 23:15
selection 23:11
sense 21:18 25:17
sent 15:23 89:12 95:21
separate 37:4 80:10 85:12
separated 51:9
separately 89:18
separation 51:15,17
september 42:19
series 2:18 9:2 14:24 56:22 67:9 83:4 86:16
serious 36:6 54:13 76:8
seriously 86:16
serve 63:15
served 62:15 62:17
service 29:16 62:14 92:21,23
services 3:24 4:19 5:3,11,19 6:2,5
ses 33:15 34:1 34:6,15,16 35:1,3
set 40:17 49:8 52:8 58:3 65:13
settle 52:10
settled 33:8 42:22
settlement 2:9 2:14 16:3,7,8 16:14,18,21 42:4,12,16,23 43:3,9,17,20 43:22,25 45:3 45:12 46:10,21 46:23,25 47:2 47:10 48:21,23 49:2,6,15,19 50:12,13 52:12 52:13,16,19,20 53:2,8,13,20 53:23 101:5,6
settlement's 47:25 48:3
settlements 48:4 49:4 50:1 53:18
settling 42:24 43:1 44:19
seven 43:8 49:7 49:12 53:15
several 88:13 92:11 93:9
severance 51:12,14,19,22
shape 65:21
shara 11:6
shared 20:2
shareholders 22:9
shoba 40:3
shortly 66:17 66:20
should've 62:9 62:17
showing 74:13 74:14
shut 32:19 39:3 81:9
shutting 81:14
side 78:9
sides 68:10 70:1
siegel 85:20
sign 51:18
signal 24:21
signature 102:6
signed 17:7 46:22
significant 21:8 56:6 83:6 86:3

significantly 44:14
signing 42:12
silent 74:10
similar 48:4 79:17 82:24
similarities 43:16
similarly 37:13
simple 68:16
simply 29:18 79:18
singapore 38:15
single 76:10
sir 95:3
sit 63:19 72:25 89:20
site 18:7
sites 17:15,19
sitting 74:10
situated 82:24
situation 18:15 71:5
situations 48:2
six 16:9 51:8
sizable 18:2
size 44:12 46:5
sizeable 78:1
slide 16:22 17:23 18:12,13
slow 83:24
small 46:4 64:4 77:1 95:13
smaller 44:2
smooth 33:21
social 74:14
sold 57:15 60:11
solicitation 47:3 66:2
solution 80:18
solutions 102:20
somebody 31:14 70:3
somewhat 27:20 71:6 75:3
sontchi 8:9 31:10,20 32:1 32:17,18 33:25 35:20 36:4,10 36:12,25 37:9 38:10,15,16,20 38:22 39:3,25 41:18
sonya 102:3,8
soon 22:1 95:16
sophisticated 32:22 86:11
sorry 18:20 39:7 46:12 47:20 48:14,15 50:23 57:4 91:24 98:9
sort 41:4 45:20 96:1
sought 34:23 35:22 52:10 55:11,20
source 96:25
south 12:3,10 13:3
southern 1:2
southfield 9:12
sparsely 72:10
speak 27:24 67:16 68:8 72:4 93:6,24 94:4 98:8,16
speaking 24:19 31:9 94:11
speaks 62:12
special 3:22 4:1 40:2
specialist 26:19
specific 26:15 30:11 53:15 84:12
specifically 26:16 39:19 59:6
specify 56:24
spend 56:24 79:9
spending 22:11
spent 24:5,9 33:14 59:9 83:17
split 45:20 92:16
spoke 62:16
spoken 60:13
sponte 91:3
st 9:3
stadler 8:13 28:8,10,11,12 28:14 31:10,19 35:19 36:4,10 39:15,22 40:10 40:20
stadler's 32:21
staffing 33:8
stage 30:20 35:14 94:10
stalking 19:22 19:25 20:4 23:25
stand 45:9 100:13
standard 29:24 31:12
standards 53:17
standing 14:5 63:25
standpoint 25:3
start 15:22 19:1 34:2 72:19 92:17 94:22
started 15:9 18:16 19:7 57:14 92:13
starting 60:1
state 22:24 23:13 24:24 99:5,16
stated 27:17 60:23
statement 20:24,25 22:2 23:23 26:18

29:16 45:1 47:4 55:14 57:23 66:2 83:23
statements 48:22 58:17 59:19 70:7 72:5
states 1:1,12 11:1 23:12 34:12,12 58:12 59:16,17 63:8 64:17 79:6 86:4 89:11,24
status 6:9,16 6:20 15:6 86:25 88:1,24
statutory 62:1 84:24 85:4
stay 41:16 52:3 52:6 96:22
steps 20:3
sticks 77:1
stipulate 65:21
stn 63:25
stop 44:23 58:12 78:11 80:25 81:1 97:7
stopping 45:21
stout 2:3 13:1 25:16,17,23,23 26:3,7,10,15
strategy 56:8 60:16
strauss 3:21 4:1
streamline 100:8
street 7:5 8:3 8:10 10:2 11:3 11:11 12:3,17 58:24
strenuously 66:14 86:18
strike 90:1
strong 67:20
strongly 85:16
structure 21:19,20 23:4 23:16,22,25 77:14
structures 21:17 23:8
struggling 81:23
style 22:20
sua 91:2
subject 45:1
submit 16:19 30:5 41:11,11 64:11 86:20
submitted 24:7 32:6
submitting 86:11
subordinate 64:1
subsection 75:17,18
subsequent 22:17
substance 50:15
substantial 6:23
substantially 19:1 59:21
successful 23:3 23:11,21 78:6
successfully 15:11
succinctly 60:9
sue 63:25
suffered 56:7
sufficiently 35:13
suggested 69:12
suggesting 57:6 82:5
suitable 95:6
suite 8:10 9:11 9:18 11:3 12:3 12:10 96:15 102:22
summarizing 21:14
summary 32:3
sums 60:9
supplemental 26:12,14 27:1 27:18
support 26:11 48:1,10,20,25 52:19 81:6
supported 56:2
supportive 69:5 86:7
sure 19:20 22:12 27:14 32:1 33:16 36:15 37:6 41:12 47:9,24 55:23 70:10,20 73:24 90:1 91:10 95:7
surprise 23:14
suspended 92:19 93:19
switching 22:4
synthesize 62:21
system 24:17 74:2 77:15 86:5

t

t 102:1,1
take 19:19 24:20 59:8 63:22 64:5,12 64:14,20 68:17 73:20 77:11 80:16 83:5 94:19,25
taken 34:21,25 37:24 64:7 86:16 96:6
takes 32:14 78:13
talk 59:8 68:6 74:3
talked 20:23 69:9,16 81:25 85:8
talking 68:17 69:25 81:13 91:16

tall 62:23
task 62:23
taught 32:18
tax 17:11
team 32:21 93:18,24
telephone 93:25
tell 15:6 44:7 60:7
telling 60:6 68:1,14 70:22
tenet 86:14
termination 51:13
terms 20:5,13 20:20 41:11 48:24 96:22
testify 51:1
texas 18:7
thank 14:2,8,9 14:18 15:5 24:3 25:10 27:7,9 28:6,7 28:10 31:7 32:21 33:22,23 38:2,10 39:9 39:11 40:20 41:13,18,19 45:14,16,18 46:13 47:22 48:11 49:1,22 50:3,4,6 51:7 53:23,25 54:8 57:12 75:7 81:5,17 83:13 83:15,16 86:22 86:23 90:5,17 90:24 91:15,20 92:1 93:16 94:7,13,15,18 95:17 96:3,10 97:3,5 99:18 100:10
thanks 15:8 16:23 18:21 27:23 41:20 96:12
themes 56:25
theories 86:1
thing 31:21 37:12 60:17 62:19 77:7 90:24
things 32:19,20 33:19 80:7
think 18:10 19:1,12 23:7 23:20 25:17 31:8,17 34:7 34:16,20 35:1 35:11 36:3,5 36:14,20 39:15 39:15,16,16 40:25 44:21 47:25 48:3,3,5 48:7,9 49:18 50:1 53:20 54:1,12 57:20 60:9 62:5,10 62:12 63:2 65:3,9 66:4,16 66:20,21 67:20 67:23 68:22 69:14,24 70:4 70:13,14 71:14 72:10,18,20,21 74:18,24 76:14 77:8 78:19,25 80:7 83:11 88:13 89:9,14 89:20 90:25 91:3,6 98:15 98:21 99:2 100:5
thinking 47:3
third 3:10 10:2 33:5 62:12 63:25 85:7 92:22
thirteen 47:19 47:21
thorough 64:22
thought 45:11 46:16,17 47:12 58:21 75:13 76:5 88:17 97:25
thousands 61:15 63:3
three 19:24 21:2 24:6 28:17 42:17 82:19 84:13 85:10
tied 58:9
time 17:17,17 18:21 20:9,12 20:19 22:7,11 24:5,10 33:4 33:14 34:17,18 34:25 35:7,21 36:20 37:17,22 39:3 40:1 47:2 48:24 54:1 56:24 58:3 59:9 61:25 63:18 67:8 68:17,18 69:18 69:19 77:12 78:12,15 83:18 85:25 87:12 95:9 96:6,13 100:1
timeline 66:12 66:15
timely 35:16
times 15:20 37:21 88:14 93:10
today 14:22 18:21 19:3 25:1 27:12,14 27:22 28:2,21 28:24 32:24 34:5 40:24,24 42:9 56:12 68:17,24 70:22 70:25 88:1,9 88:24 90:15,19 91:9 100:1
today's 30:5 91:1
together 62:21 67:2 88:17 89:23

togut 9:16
token 57:15
told 33:6 57:22 57:24 58:15 59:2 98:19
tolled 63:3
took 25:22 27:18 56:6 73:12,17 78:4 79:11,14
top 55:13
topic 68:9
tort 61:19
total 17:8 20:1 44:18
totally 84:19
touch 57:19
tough 64:13
tougher 33:7,7
town 9:11 55:22
track 33:12 95:6
traditional 21:18
tranche 16:3
transcript 90:25 91:9,12 91:18,19 102:4
transcripts 91:4
transfer 56:10
transferred 59:21
transformer 17:20
transparency 34:8 91:6
trend 17:24
tribunal 51:25 52:2,4,7,18
trip 38:16
troutman 9:9
true 43:22 55:15 56:22 57:16,25 58:1 58:25 60:6 63:17 72:15 91:14 102:4
truly 32:15
trust 46:1
trustee 11:2 23:13 26:23 27:8,10 30:6 30:23 31:8,23 38:5,7 41:3 64:17 75:15,19 78:17 79:6 80:16 89:11,24 90:6
trustee's 41:7 63:9 87:10
try 21:24 60:14 60:15 68:23 72:22 73:1
trying 24:18 33:2 47:6 57:21 76:13 81:25 90:9
tuganov 11:10 97:6,14
tuganov's 98:13
turetsky 11:21
turning 16:22
turns 60:24
turpin 13:13 98:20,21,23 99:2,5,18
tweed 9:1
tweet 72:22
tweeted 72:23
twitter 55:22
two 15:24 16:17 17:8 33:2 36:11 38:2,6 40:1,5 45:13 48:25 67:24 68:12 76:7
type 26:20
typical 49:7 95:1

u

u.k. 51:24 52:7 52:17 58:5,10
u.s. 1:23 11:2 26:23 27:8,10 30:6,23 31:8 31:23 38:5,7 41:2,7 75:15 75:19 78:17 80:16 87:10 88:10 90:6
u.s.c. 6:21
ubierna 13:12 39:14
ucc 16:4 29:5 95:11
ultimately 47:12 48:23 97:20
unable 93:2
unbelievably 72:20
uncertainty 52:24
uncollaterali... 58:16,21 59:7 59:17
uncontested 25:24
uncovered 56:2 62:10 64:19
under 18:20 20:14 36:19 51:10 72:13 74:20 84:24 93:19 95:4
underlying 73:8
underpinnings 56:19
understand 23:2 47:7 52:5 56:15 62:16 67:23 70:14 76:14,17,17,23 77:6 79:25 80:6,6 87:25 95:23
understanding 99:10,16
undertaking 58:14

unfair 82:25
unfamiliar 86:5
unfortunate 23:14
unfortunately 92:18
unique 26:18
united 1:1,12 11:1 23:12 34:11,12 58:12 63:8 64:17 79:6 86:4 89:11,24
unlicensed 58:7
unmute 24:17 66:7,7 91:22
unnecessarily 35:22 40:18 65:14 99:8
unprecedented 71:7
unrealistic 84:19
unrepresented 61:6
unsecured 2:25 3:7 4:20 5:5,13 5:20 11:17 12:2,9 54:6 63:19 64:24,25 77:15 79:5 98:11
unsuccessful 77:24
unsuspending 92:25
untimely 35:6 39:5,7
unusual 34:1
update 16:24 17:2 18:14 19:19 20:20 24:25 95:20
updates 95:22
upload 30:5
urge 23:9
use 68:23 82:1
used 64:19 71:10 75:3,4,4
user's 16:9
users 15:10,11 15:13 16:6,14 16:21
uses 77:15
using 2:1,8,13 2:18,24 3:6,14 3:20 4:5,11,17 5:1,9,17 6:1,9 25:5 29:20
usual 50:1 53:14
usually 30:15

v

v 85:20
vacation 71:3
valuation 2:4 26:8,15,17,20 45:1
value 15:11,16 16:22 17:21 18:25 19:4 22:13 25:6 43:3 44:14 61:20
varick 11:3
various 55:9 79:3 87:24
varying 63:12
venable 11:9 97:13
verification 92:13,22
veritext 102:20
vermont 10:1
versed 35:13
victor 13:12
video 50:20 59:13,16
videos 60:7 72:3
view 30:18 36:6 37:3 39:2 41:6 88:19
views 22:25
vigorously 48:25
vindicate 65:16
violate 78:3
violating 63:9
virtually 25:20
vision 59:13
voice 18:20 27:14 100:6
volatile 17:15
volume 21:8 32:13
vote 47:7 65:23 65:24
voting 23:23 23:24 43:6 65:20
voyager 35:10 35:12,16 36:22
vt 10:3

w

w 11:11
wacker 12:10 13:3
wading 55:8
wages 51:20,21
wait 30:4 36:3 40:8 78:11 79:10 80:14
waived 31:3
wales 51:11
wall 58:24
wallets 43:22 43:23 44:5
walsh 7:9
want 17:25 19:16 23:21 27:8,11,24 28:20 31:24 32:2,17,21 33:24 35:22 37:12,25 38:10 38:18 40:18 41:4,16 43:19 45:15 47:23 50:23 53:6 55:13 56:24 59:8,11 62:25 63:7 67:6 68:13,18 69:7 74:3 75:8

78:23 81:1,3 83:24 90:3,21 91:23
wanted 19:23 29:6 38:2 45:18,23 47:9 48:20 69:4,5 76:5 91:1 95:20 97:16 98:23 99:24
wants 38:25 80:17 88:23
washington 7:15 9:4
waste 65:12
watch 59:23,24
watched 59:11
watching 92:2
watkins 40:2
wave 81:8
way 18:8 30:6 65:10,19,20 75:3,5 79:20 89:25 90:11
we've 15:23 21:9 22:1,15 22:20 24:4,6,9 28:1,4 33:6,12 34:7 42:6 64:6 65:11 68:9 69:8 81:22,25 82:3,3,5 89:6,9 91:11,13 93:18 93:21 96:7
weather 18:21
website 55:22 59:14
week 15:25 21:23 28:25 66:19 96:9
weekend 21:9 89:12
weekly 24:24
weeks 51:8 59:10 76:7
weigh 85:15
weighting 95:11
weinberg 5:18
went 56:11 75:12
white 4:18 11:16 12:1,8 48:17 54:5 98:10
who've 32:6 34:1,5
wholly 71:7
wi 8:11
wide 61:24
willing 65:21
wind 23:14
wish 39:11 48:12
wishes 40:23 51:2 100:12
withdraw 15:19,23 92:25
withdrawal 15:7,10 16:6 16:16 52:15 92:11,14,17
withdrawals 15:14,15 92:8 92:18 96:7
withdrawn 15:17,19
withheld 36:21
withhold 2:10 9:10 42:4,8,24 42:25 43:7,22 44:10,12,13,18 45:7,10,17,25 46:19,19,21 47:14,16,18 48:8 64:7
withholder 45:4
withholding 29:24
witness 65:2
wohlman 2:15 51:9,17,19,20 51:24 52:11,15 53:8 101:6
word 49:21 86:20
worded 30:7
words 29:8 45:24 66:7
work 21:10 25:3 26:15,20 32:4,22 33:2 37:3,3 38:11 38:12 41:7,7 41:11 45:1 46:9 68:7,15 68:19 90:9 93:20 97:25
worked 42:11
working 20:4 21:13 22:18 32:7 38:3 45:18 89:9,10 96:7 100:4
worry 36:18
worthy 91:11
wrap 24:21
wraps 20:14
write 83:24
written 84:10
wrong 73:19 79:14
wrote 82:11 85:1

x

x 1:4,10 101:1

y

y 91:24
yeah 15:1 18:16 31:6 37:18 48:19 67:18 76:4
years 40:25
yep 54:3
yesterday 16:13 19:21,24 21:9 55:14
yielding 25:15
york 1:2,14 7:22 8:18 9:19 10:10 11:4,12 11:19 29:24 30:10
young 39:23

z

zero 19:12
zoom 2:1,8,13 2:18,24 3:6,14 3:20 4:5,11,17 5:1,9,17 6:1,9 24:19 34:4,5 51:1